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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 193.

RAMON VALDES, APPELLANT,

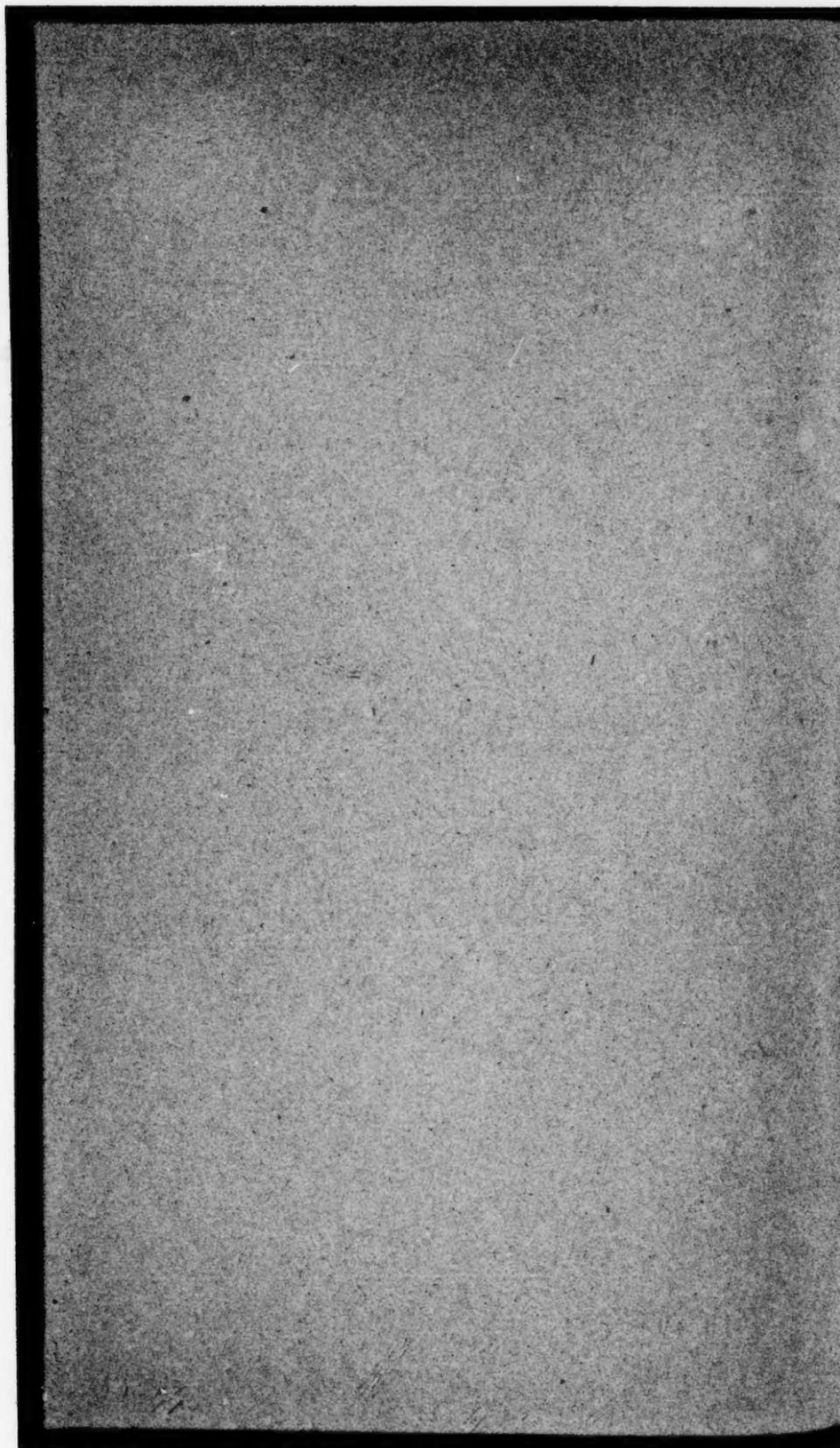
vs.

CENTRAL ALTAGRACIA, INCORPORATED, AND NEVERS
& CALLAGHAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

FILED JANUARY 28, 1910.

(21,984.)



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1 THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a stated term of the District Court of the United States for Porto Rico, within and for the district aforesaid, begun and held at the Court rooms of said Court in the City of San Juan, on the second Monday of October, being the eleventh day of that month, in the year of our Lord One Thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-fourth.

Present, the Hon. Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of a Final Decree in the following case, to wit:

No. 564. In Equity.

RAMÓN VALDÉS
vs.

CENTRAL ALTAGRACIA, INCORPORATED, and NEVERS & CALLAGHAN.

Consolidated with

No. 565. In Equity.

CENTRAL ALTAGRACIA, INCORPORATED,
vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Be it remembered, that heretofore, to wit: on the second day of June, 1908, came the Complainant by his attorneys and filed his Bill of Complaint in this cause, which said Bill is as follows, to wit:

RAMÓN VALDEZ
vs.
CENTRAL ALTAGRACIA, INCORPORATED,

Petition for Receivership.

2 To the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico:

Ramon Valdez, a subject of the King of Spain, and a resident of Porto Rico, respectfully brings this, his Bill of Complaint against the Central Altagracia, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of Maine, U. S. A.,—and says:

I.

That your orator now is, and during all of the time hereinafter mentioned was, a subject of the King of Spain and a resident of the Island of Porto Rico.

II.

That the defendant now is, and during all of the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Maine, U. S. A., and doing business in Porto Rico.

III.

That heretofore, to wit, on or about the 2nd day of November, 1907, your orator and the said Defendant entered into a contract of conditional sale at the city of New York, State of New York, U. S. A., by virtue of which contract your orator conditionally sold, assigned and transferred to the said Defendant:

(1) All of his right, title and interest in and to a certain lease of certain premises, more particularly described, as follows, to wit:

That certain lease of the sugar-factory known as the "Central Altagracia," situate, lying and being near the City of Mayaguez, in the jurisdiction of Mayaguez, Island of Porto Rico, together with certain machinery for the manufacture of sugar then, at that time, being in and forming part of said factory, together also with Twenty-two (22) cuerdas of land upon which the said factory is built and which pertain, and are next, to and immediately surrounding the said factory, executed at Paris, France, on or about the 18th day of January, 1905, by Joaquin Sanchez de Larra-goiti and in favor of Salvador Castelló, of Mayaguez, Porto Rico.

(2) All of his right, title and interest in and to certain machinery for the manufacture of sugar at the date of the said contract belonging to and being the property of said Plaintiff, and being in the said factory, and which had been placed therein by the said Defendant. A copy of which said contract, together with its correct translation into the English language is hereto annexed, marked Exhibit "A," and prayed to be considered and taken as part of this Bill.

IV.

That, however, it was expressly provided in and by the terms of the aforesaid contract of conditional sale of November 2, 1907, that the title in and to the aforesaid lease and machinery should not pass and be conveyed and transferred to the said Defendant, but should belong to and remain in your orator until the said Defendant had fully complied with and performed certain conditions upon it imposed by the said contract. That among the said conditions was the payment of the full amount of the purchase-price of the said lease and the said machinery, and which amount was the sum of \$65,000,000, payable in four (4) equal instalments, due, respectively, on the first day of April of each of the years of 1908, 1909, 1910 and 1911, together with interest at the rate of Ten (10) per cent., per annum, on all deferred payments, and which interest was payable every six (6) months, and to be compounded at such times if not paid.

V.

That it was further provided by the terms of the aforesaid contract that should the Defendant be unable to pay any of the afore-

said instalments when due the said Plaintiff would be obliged to extend the time for the payment of the said instalment for 4 the further term of one year; provided, however, that the interest due on account of the total sum then owing by the Defendant, as aforesaid, should be or was paid.

VI.

That it was further provided by the terms of the aforesaid contract that should the Defendant fail to keep and observe any of the conditions by it to be kept and observed according to the terms of the said contract, and especially should the said Defendant make default of the payment of interest when due, or any of said instalments when due, then the said Plaintiff would immediately and ipso facto be entitled to re-enter into and take possession of the said factory, and the said premises, and the said machinery, and the said contract of lease, as the true, lawful and exclusive owner of the same.

VII.

That by virtue of the said contract of November 2, 1907, the said Defendant went into possession of the said premises and factory, and took possession of the said machinery and said contract of lease, and still continues to occupy and hold the same.

VIII.

That according to the terms of the said contract there became due on the first day of April, 1908, the first of the instalments above-mentioned, amounting to \$16,250.00, together also with the interest aforesaid on the total sum of \$65,000.00 from the date of the aforesaid contract; but that the Defendant has failed to pay all, or any part, of said instalment, or of said interest.

IX.

That by the terms of the said contract the Plaintiff is entitled to the immediate possession of the said premises, factory, machinery and lease, but that the said Defendant continues in possession of the same without the permission, and against the will, of your 5 orator, and refuses to deliver to him possession of the said premises, factory, machinery and lease after default in the payment of the interest and first instalment, as aforesaid.

X.

That your orator on the date of the contract aforesaid, was and now is, the sole and exclusive owner of the said lease and the machinery mentioned in said contract, and is now entitled to the possession of the premises, factory, machinery and lease aforesaid.

XI.

That heretofore, to wit, on the 2nd day of June, 1908, your orator demanded of the said Defendant the possession of the said factory,

premises, machinery and lease, but that the said Defendant refused to deliver the same to your orator.

XII.

That heretofore, to wit, on the 2nd day of June, 1908, your orator filed, on the law-side of this Court, his certain suit against the said Defendant for the possession of the said premises, factory, machinery and lease,—a copy of which complaint is hereto annexed, marked Exhibit "B," and hereby made a part of this Bill.

XIII.

That the said factory and the said machinery is of great value, to wit, not less than the sum of \$65,000.00, and is dedicated to the purpose of manufacturing sugar from cane. That the season for the grinding of cane and the manufacturing of sugar in Porto Rico usually commences about the month of December, of each year, and terminates in the months of May, June or July, of the year following, according to the amount of cane to be ground. That there are no lands annexed to, or which pertain to, the said factory which can supply the same with any appreciable quantity of cane for the purpose of grinding, so that it is absolutely necessary in order that the said factory may grind any cane and manufacture sugar for the owner of the said factory and machinery to make contracts with the people (colonos) growing cane in and about that vicinity, so that said growers of cane will deliver the same to the said Central Altamaria to be ground, and that said contracts are usually made and entered into in the month of June, July and August. That any delay in the making of said contracts for the delivery of cane, as aforesaid, endangers the business of the said factory and renders the owner of the same liable to the loss of the said contracts and the consequent failure of securing cane for grinding during the following season, thus obliging the said factory and the said machinery to remain idle and entailing the loss of thousands of dollars to the owners of the same.

XIV.

And your orator further alleges that the said Defendant is indebted to various persons in large sums of money, to wit: in a sum in excess of \$60,000.00, and is unable to pay the same or meet its obligations, and is insolvent.

XV.

That on the 16th day of May, 1908, judgment was rendered by this Honorable Court against the said Defendant and in favor of the firm of Nevers and Callaghan for a large sum of money to wit, about \$17,000.00 100 then due and owing to the said firm. That thereafter the execution was issued on the aforesaid judgment and a levy was made by the Marshal of this Court, in pursuance of said Writ, on the aforesaid factory and machinery on the — day of May,

1908, and that the said Marshal now threatens to sell the said factory and machinery in satisfaction of the said judgment.

7

XVI.

And your orator further alleges that unless a Receiver be appointed, pending the decision of the aforesaid suit at law, to take charge of and preserve the said factory and machinery, and with the powers hereinafter mentioned, the said factory and machinery will greatly deteriorate in value and the owner of the same will suffer great loss and be unable to secure the contracts for the delivery of the cane, as above stated.

In consideration whereof, and for as much as your orator is remiss in the premises, at and by the strict rule of the common law, and is only relieviable in a court of equity, where matters of this sort are properly cognizable and relieviable, etc.

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the said Defendant may answer in the premises, but not upon oath or affirmation, the benefit whereof is hereby expressly waived by your orator, he now prays the Court:

May it please Your Honor to grant unto your orator a Writ of Subpoena, directed to the said Defendant-Corporation and to be served upon its representative in Porto Rico, Frederick L. Cornwell, thereby commanding the said corporation, and under a certain penalty therein to be limited, to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide such order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity.

That a Receiver be appointed to take charge of the premises, factory and machinery of the Central Altagracia above-described, and to manage the same under the orders of this Court pending the decision of the aforesaid suit at law.

That the said Receiver be authorized by proper order of this Honorable Court to enter into and make contracts with suitable parties for the delivery of cane to be ground at the said sugar-factory, to wit, Central Altagracia, and to advance such sums of money on said contracts as is usual and proper in such cases; and, further, that the said Receiver be authorized for this purpose, and for the preservation of the said machinery and factory, to issue proper Receivers' certificates of indebtedness up to the amount of \$—, and which indebtedness represented by the said certificates shall be and constitute a first and prior lien upon the said factory and machinery.

And that your orator may have such other relief in the premises as the nature and circumstances of the case may require.

T. D. MOTT, JR.,
Solicitor for Complainant.

San Juan, Porto Rico, June 2, 1908.

UNITED STATES OF AMERICA,
District of Porto Rico, ss.

Ramon Valdez, being first duly sworn, deposes and says: that he is the Complainant mentioned in the foregoing bill; that he has read the same and knows the contents thereof, and that the facts therein alleged are true of his own knowledge.

R. VALDES.

Subscribed and sworn to before me this 2nd day of June, 1908.

JOHN L. GAY, *Clerk,*
 By C. A. DAVIDSON, *Deputy.*

RAMON VALDES
 vs.
 CENTRAL ALTAGRACIA, INCORPORATED.

9 To Frederick L. Cornwell and N. B. K. Pettingill—the First as Vice-President and Acting President, and the Second as Secretary and Treasurer, and both as Directors in Porto Rico, of the Corporation “Central Altagracia, Incorporated.”

You will please take notice that there has been filed with the Clerk of the above mentioned Court a Bill of Complaint against the aforesaid corporation, a copy of which bill is hereto annexed, and which bill prays, among other things, for the appointment of a Receiver to take charge of and manage the factory, machinery, etc., of the Central Altagracia, and that the above-named Complainant will, at 5:00 p. m. of the 2nd day of June, 1908, or as soon thereafter as Counsel can be heard, apply to the above mentioned Court to be heard on said petition, and that the said Receiver be then appointed as prayed for.

San Juan, Porto Rico, June 2, 1908.

T. D. MOTT, JR.,
Solicitor for Complainant.

Received copy of this 2nd day of June 1908 at 5 P. M.

F. L. CORNWELL.

(Filed June 2, 1908.)

RAMON VALDES, Complainant,
 vs.
 CENTRAL ALTAGRACIA, Defendant.

Demurrer of Central Altagracia, Defendant, to the Bill of Complaint of Ramon Valdes, Complainant.

I.

This Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill

to be true, in such manner and form as the same are therein set forth and alleged doth demur thereto, and for cause of demurrer sheweth that the said complainant hath not, in and by said 10 bill, made or stated such a cause as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against this defendant. Wherefore this defendant demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill of complaint or any of the matters or things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

FREDERICK L. CORNWELL,
Sol. for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

FREDERICK L. CORNWELL,
Solicitor for Dft.

ISLAND OF PORTO RICO,
City of San Juan:

Frederick L. Cornwell, being duly sworn deposes and says that he is Vice-President of Central Altgracia, defendant herein, and that the foregoing demurrer is not interposed for delay.

FREDERICK L. CORNWELL.

Sworn to before me this 2nd day of June, 1908.

JOHN L. GAY, *Clerk.*

Journal Entry, June 2, 1908.

No. 564. In Equity.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, Inc.

Comes now T. D. Mott, Jr., solicitor for the complainant Ramón Valdés, and files a petition for the appointment of a receiver for the defendant corporation. The court hears counsel for both 11 sides in the matter and a further hearing of the same is continued over until tomorrow, June 3rd.

(Filed June 2, 1908.)

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, in Chancery Sitting:

Central Altgracia, Incorporated, a corporation duly organized and existing under the laws of the State of Maine and a citizen of

said State, brings this its bill of complaint against Ramon Valdés, who is a subject of the King of Spain residing in Porto Rico, and George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners doing business under the firm name of Nevers & Callaghan, who are each and all citizens and residents of the city and State of New York.

And thereupon your orator, complaining, says that, while it is, as above alleged, organized and exists under the laws of the State of Maine, its principal and only business is the running of a factory for the grinding of sugar cane and production of sugar therefrom, situated in the Añasco Valley, near the city of Mayaguez, Porto Rico; and that it is duly authorized and licensed to carry on business within this jurisdiction by the Territorial Government called the "People of Porto Rico."

Your orator further alleges that during or about the month of March, A. D. 1907, finding itself in need of additional ready money to meet its maturing obligations, it negotiated a loan from the defendant Ramon Valdes, through its proper officers, for the sum of \$35,000 which it agreed to repay to said Valdes on or before the 1st day of April, 1908, with interest at the rate of 10% per annum, and as an additional consideration for the making of said loan it was agreed by the managing officers of your orator that said Valdes should be chosen a Director and Vice-President thereof at a salary of \$3,000 per year, which agreement was carried out.

12 Your orator further alleges that during or about the month of June, 1907, the same being at the end of the grinding season for that year, the Directors of your orator, after taking the advice of expert engineers, determined that it was necessary for the welfare of the Company to raise an additional loan of \$30,000 for the purpose of repairing and re-arranging the machinery already in its factory and purchasing additional machinery, and the President and Treasurer of your orator went to New York City for the purpose of negotiating a loan of sufficient amount to cover the above needs and also to pay off certain indebtedness then existing including the debt of said defendants Nevers & Callaghan, which has since been reduced to judgment as will hereinafter more fully appear; that during their sojourn in New York for the purpose aforesaid said President and Treasurer entered into further negotiations with said defendant Valdes, then Vice President of your orator as aforesaid, in consequence of which a preliminary agreement was arrived at whereby defendant Valdes was to advances to your orator the funds necessary to purchase the needed machinery and, if said officers of your orator offered to return said advance with certain commissions and interest before the 15th day of September, 1907, said Valdes was to accept the same and, in case of the failure so to return said advances the same and such other advances as might be agreed upon thereafter were to be regarded as a refaccion debt and the proper documents for the purpose were to be executed; that matters between your orator and said defendant Valdes remained in that condition until about the 15th day of October, 1907, at which time said officers of your orator not having returned the said advances

and further negotiations having resulted in an agreement between said defendant Valdes and the holders of a majority of its stock on behalf of your orator that, in consideration of the promise 13 of said defendant to finance the Company, he should be

elected a member of the Board of Directors and President of the corporation for a period of four years, or until the indebtedness of your orator to him should be paid off, at a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2,500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of your orator (which was all that was remaining in the treasury), the proper documents were duly executed to carry into effect the arrangement aforesaid, the said stock was transferred without further consideration, and said defendant Valdes was elected President he already being a member of the Board of Directors of your orator, and the former President, F. L. Cornwell Esq., was elected Vice President.

Your orator further alleges that, after said defendant Valdes became President of your orator in the manner aforesaid, he proceeded to control and manage the business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent Chief Engineer in charge of the running of the machinery against the protest of the other members of the Board, and in all respects to manage the business of your orator according to his individual will and caprice. That from the time of the election of said Valdes as President as aforesaid until the present day not one dollar of the funds of the company has passed through the hands of its Treasurer but every dollar thereof has been collected and disbursed by said Valdes, or by those acting under his direction, so that said Treasurer, in order to avoid responsibility for the uprising acts of

said defendant Valdes over which he had no control, was 11 forced to act under the provision of the by-laws of your orator and ask the Board of Directors to allow him to surrender the performance of his duties as Treasurer to said Valdes by way of substitution, and has been ever since ignored in respect to such duties.

Your orator therefore alleges that said defendant Valdes never in fact loaned any amount to your orator beyond the first loan of \$35,000 hereinbefore referred to but has expended whatever amount he may have spent in your orator's business, with the exception of the price paid for a portion of the machinery purchased and some of the reconstruction work, without the consent or authority of your orator's Board of Directors and without any part of the same passing through its treasury; and that the total amount claimed to have been expended by said defendant in your orator's business is far in excess of any expenditure authorized or contemplated by said Board of Directors and far more than the financial condition of your orator warranted.

Your orator further alleges that after the making of the preliminary agreement between the officers of your orator and said Valdes in New York and the beginning of the purchase of machinery by him and making of repairs in the factory the said Valdes assumed the active management of the business of your orator, sent his agents to your orator's factory to take charge there and, through said agents spread throughout the community of Mayaguez the report that said defendant had been obliged to take over the property and business of your orator on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed and had no further connection with said business, and that said defendant had purchased and was the owner of said factory and

machinery and all the property of your orator included in
15 its said plant, the said defendant all the while well knowing that said individuals were still respectively Vice President and Treasurer of your orator and still members of its Board of Directors; all of which acts tended greatly to the injury of your orator in depriving those who would otherwise have dealt with it of all confidence in the stability of its business and tending to cause suspicion of the character and ability of its officials, other than said President.

Your orator further alleges that said defendant, instead of carrying out his said agreement with your orator to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and to which he has now brought a suit at law in this court to establish his title, yet he has at all times claimed and still claims that your orator is indebted to him for the price of said machinery. That said defendant also proceeded to procure and enter into contracts for the grinding of sugar cane in his own name, instead of in the name of your orator, and in some instances the cane so bought has been entered in the books of your orator as purchased at a higher price than named in the individual contract with said defendant; all which was in direct violation of his duty to your orator as its President and managing officer and to the financial injury of your orator.

Your orator further alleges that said defendant Valdes before the beginning of the grinding season which is just closing was guilty of inexcusable extravagance in the work preparatory to such season and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding the management of orator's factory, under the direction of said
16 defendant as President, has been both extravagant and incompetent, that soon after the season commenced he discharged from orator's employment the only employé competent to manage the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of such machinery of the complicated and up-to-date kind contained in said factory; that he has continued as Chief Engineer during the

whole of the crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been irregular causing increased expense in grinding and decreased results in sugar; that in the midst of the grinding season he absented himself from the Island for a period of nearly two months, during which time his Manager left in charge was without authority of discretion in action as well as without funds properly to conduct your orator's business; and that, in short, the extravagance and incompetence of the management of said defendant was such that, notwithstanding the perfect condition of the machinery in said factory and the unusual high price of sugar during all of said grinding season, the operations of your orator's factory show practically no profit, and, considered in connection with the general expenses of your orator for the year, show a positive loss, and the amount of sugar produced only three-fourths as much as either of the previous years of your orator's existence.

Your orator further alleges that said defendant Valdes expended several thousands of dollars in the purchase of scales for the weighing of cane and erected the same at various places along the line of the railroad, but said expenditure resulted practically without benefit

as only a small amount of cane was purchased at any of said
17 scales on account of the refusal of said defendant on behalf
of your orator to pay the competitive rates which other
buyers were paying, while on one occasion purchasing outright cane
upon which your orator suffered a considerable loss.

Your orator further alleges that said defendant, since occupying the office of President, has purchased for his own account a large amount of the indebtedness owing by your orator at a large discount from the face value thereof, but instead of allowing your orator the benefit of the reduced price at which the same was acquired, and instead of using said money for the advantage of your orator in acquiring cane contracts, of which your orator was in great need said defendant has demanded and is now demanding of your orator's Board of Directors that entries be authorized in its books of account transferring said indebtedness into the name and favor of said defendant for the amount of its full face value and interest.

Your orator further alleges that in the month of November, 1907, after defendant and his agents had been in full possession and control of the books and accounts of your orator since the preceding August, defendant made an offer of sixty cents on the dollar of the par value of orator's capital stock for a controlling interest therein, but after being in full control and management of all your orator's business during an entire sugar season, although he claims that said season had been a prosperous and successful one, defendant has stated that said stock is worth practically nothing.

Your orator further alleges that on the 16th day of May, 1908, judgment was recovered in this court by the said defendants Nevers & Callaghan against your orator for the sum of about \$17,000 upon which execution has been issued and levied upon the said ma-

chinery and factory of your orator, yet said defendant Valdes as President of your orator has done nothing to avoid said execution and levy. That, although said defendant has had entire 18 charge and control of the financial operations of your orator since his election as President, and has been charged with the duty as such of providing for means of paying the most pressing indebtedness of your orator, yet he has made no provision for the payment to himself of the interest now due upon the loans claimed to have been made by him to your orator, and is even now bringing a suit in this court to declare a forfeiture of the title of your orator to its said property because of the non-payment of said interest.

Your orator further alleges that there are practically no lands annexed to, or which pertain to, the factory of your orator which can supply the same with cane for the purpose of grinding, so that it is necessary in order that said factory may grind cane and manufacture sugar that your orator should have contracts with the growers of cane for the delivery of the same for grinding, which contracts are usually made in the months of June and the following; that said Valdes has failed to provide contracts for cane to the extent needed by your orator and that further delay in the making of the same will endanger the business of your orator and render it liable for large loss, and that for the obtaining of a sufficient number of such contracts advances of considerable quantities of money to the cane growers will be necessary; and that the value of your orator's said property depends upon its carrying on its said business and continuing as a going concern, and that your orator has a large unsecured indebtedness beside that owing to said defendant Valdes.

Your orator therefore avers that a Receiver should be appointed by and under the authority of this court to take charge and control of the property all and singular of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or property funded so that both creditors and 19 stockholders may be secured.

To the end, therefore, that your orator may have that relief which can only be obtained in a court of equity and that the defendants, Ramon Valdes, and George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners as alleged, may answer this bill, but not upon oath, the benefit whereof is hereby expressly waived; that a receiver may be appointed for the purposes hereinbefore alleged and with the usual powers and responsibilities of receivers in such cases; that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver; and that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

May it please the court to grant unto your Orator a writ, etc.

F. L. CORNWELL,
Counsel for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico:—

F. L. Cornwell, being first duly sworn, says that he is Vice President as well as counsel for the complainant Company; that its President, Ramon Valdes, is one of the defendants; that he has read the foregoing bill and knows its contents and the statements therein made are true of his own knowledge.

F. L. CORNWELL.

Sworn to and subscribed before me this 2nd day of June, 1908.

JOHN L. GAY, *Clerk*

Journal Entry, June 2, 1908.

No. 565. In Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES.

20 Comes now F. L. Cornwell, Esq., solicitor for the complainant herein and prays the court for the appointment of a Receiver for the Central Altagracia, Incorporated.

The Court hears counsel in the matter, and, not being fully advised in the premises, the further consideration of same is continued over until tomorrow, June 3rd.

Journal Entry, July 20, 1908.

No. 564.

RAMÓN VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES.

In these two entitled causes, the Court having in the forepart of June, 1908, immediately previous to the trip of the Judge to the States, appointed H. H. Scoville, Esq., under the prayers of the bills, as Temporary Receiver of the property referred to in each of the bills of complainants, and now the matter of the appointment of a permanent receiver and other matters concerning said estate, having been argued by the respective counsel and considered by the Court during several days last past, and on consideration thereof:

The Court now files its views in writing as to the matter of said Receivership, etc. and requires that proper orders be drawn and entered without delay to carry out the views and directions of the Court as therein set forth.

Thereupon F. H. Dexter, representing the Sanchez de Larragoiti Estate, which claims to own the fee to the land upon which the Central Altagracia is built, objects to the views and orders 21 of the Court as thus set forth, and to the issuing of any Receiver's Certificates to be a lien upon said property, and gives notice of his intention to intervene in the case and oppose the same in behalf of his said client.

Thereupon N. B. K. Pettingill, Esq., files a petition in said causes intervening on behalf of certain creditors, and F. L. Cornwell, Esq., files a petition praying that the Receiver be appointed be authorized to borrow money for the carrying on of the enterprise.

Mr. Cornwell further files a petition signed by divers of the stockholders of the said Central Altagracia, praying for the appointment of N. B. K. Pettingill, Esq., as such Receiver in the premises.

In accordance with the views of the Court thus on this day filed as above set out, it is:

Ordered that said two above entitled causes shall, for the purpose of the Receivership and for all purposes of actual hearings and trial, be conducted as one suit, and the Clerk will place a notice in the files of each case to that effect. Counsel for the parties may make up the actual issues under the separate titles and numbers, and may introduce their proofs on the issues thus raised,—but the two causes shall be considered as joined for the purposes of the receivership and all hearings and the trial.

(Filed July 20, 1908.)

No. 564. Equity.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

and

No. 565. Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES.

22 *Views of the Court as to the Matter of a Receivership under Which Proper Orders are to be Drawn and Entries to be Made.*

The above two entitled causes were filed in the forepart of June, 1908, as the Court was about to take a short trip to the States. At

that time not being able to give the attention to the matter which its importance demanded we considered them together as they involved the same property and requested the same relief, and we appointed H. H. Scoville, Esq., as Temporary Receiver and Custodian of the premises and estate in dispute.

Since our return from the States on July 2nd, the matter has been the subject of consultation between the Court and counsel for the respective parties almost daily. After a full discussion of the matter and a full consideration of the rights of the parties and the situation of the property as shown by the above two mentioned suits and by other suits on file in this Court, we have concluded to settle the matter at least for the present as follows:

The two suits, if the same has not been done heretofore, will be consolidated and proceed as one suit. The complainant in each suit will at once file a request to the Court that the Receiver to be appointed be given leave to borrow such sum of money as the Court may deem proper for the preservation and conduct of the said estate and sugar business, the loan to be declared a first lien against such complainants and all creditors upon all property rights such complainants may have in the premises.

The Court has concluded that it has no inherent right to prevent the writ of error to the Supreme Court of the United States prayed for by the defendant, the Central Altagracia, in suit No.

516, of Nevers & Callaghan against it, and therefore 23 the same is allowed and supersedeas granted. But under the circumstances the bond to stand as a supersedeas will be fixed at the sum of \$16,000 and a proper entry will be made in the suit referred to, to carry out the leave here granted. But if said supersedeas bond is not filed, even then the execution in the premises will be stayed, until the further order of the Court.

The resignation of H. H. Scoville, Esq., as temporary Receiver will be accepted and he will be at once appointed permanent Receiver of the estate in question, under the prayers of the bills of complaint. But the Court reserves the right to end this receivership at any time it deems the same best for the interest of the estate. The Receiver will be allowed \$500 for the two months service he has already performed, and in the future until the further order of the Court, as permanent Receiver he will be allowed a salary of \$300 per month, beginning August the 1st, 1908. He will give a bond either Security Company or personal, in the sum of \$10,000 conditioned as is usual, and take and file a proper oath in the premises.

He will be at once permitted to borrow money and to issue Receiver's certificates or promissory notes therefor, the same to be a first lien on all of the rights of either of the complainants in the above entitled suits, upon the property described in the bills and now owned, claimed or possessed by the Central Altagracia, Inc., or Ramón Valdés and situated upon or appurtenant to the plant on the 22 acres of land, upon which the Central is located, whether such property or rights are claimed by the Central Altagracia or Ramón Valdés. Said certificates or notes shall not be issued for

the present at least to exceed in all \$10,000.00, nor at first to exceed the sum of \$6,000 without further leave of Court, the balance to be issued, if required, and the loan shall bear interest as borrowed at as low a rate as may be obtainable, but in no event to 24 exceed 9% per annum. Such money or any part thereof shall not be borrowed for longer periods than nine months.

The Receiver will, with the money received, pay such sum, said to be about \$1,600, as may be found due to colonos for cane already delivered to the mill, and shall further at once pay the Insular taxes due on said estate, said to be something like \$1,400. He will pay himself his salary as here allowed and the advances he has already personally made to the estate. He shall also pay some few small bills including wages, etc., amounting in all to a little over \$500 now due from said estate, for all of which he shall take proper receipt. The balance of said sum first borrowed shall be used for monthly pay rolls and if found necessary, in advances to colonos or to people who agree to deliver their sugar cane to the Altamaria Mill to be ground,—the Receiver to take the usual best security, in that behalf.

The Receiver will at once discharge all unnecessary help during the idle season, of every kind and character, save that he may have if necessary one assistant at a salary not to exceed \$60 per month, and said Receiver by himself and with the aid of said assistant must at once use his best endeavors to secure cane-grinding contracts for said Central for the longest time possible and report his success in that behalf to the Court as often as may be. And whenever he finds opportunity to secure any such contracts by the advance of any sum of money which he may not then possess, he will apply to the Court for leave to borrow money for that purpose if within the original amount of \$10,000 here authorized. It is understood that the paramount desire of the Court is to preserve said property as a going concern, and that therefore the obtaining of cane-grinding contracts is the matter of first and greatest importance, and the

25 best efforts of the Receiver and all others concerned must be directed to that end. It is understood that said receiver shall take absolute and general charge of said estate, preserve the plant and machinery as may be proper, during this idle season, and employ herdsmen and watchmen as may be absolutely necessary only, so as to keep down expenses of every kind and character.

He shall realize and use as may be necessary any funds by the sale or handling of any molasses or any product that may now be on hand. He will in any event file monthly statements with the Court and will as often as may be necessary inform the Court of his success as to obtaining of cane-grinding contracts with a view to further action by the Court in about the month of November, 1908, as to the commencement of grinding for the new season, or refraining from so doing. It being understood that the Court reserves the right to so cease and refrain notwithstanding its orders appointing the receiver hereunder.

It being proper in any event, and the Court having the specific

promises of the respective parties contending here of their full aid and support, to the Court and the Receiver in carrying out the interests of this estate, the Court and the Receiver will expect such aid and assistance in all proper ways, but the Receiver will permit no interference by either of the parties as to the actual conduct or management of the estate as against his own views, and will report to the Court as he shall deem the same necessary, any act or thing done by either of the parties that may in his judgment not tend to the welfare of the estate.

All creditors of the estate must file their accounts with said Receiver or the Court as they may deem best, and the same will be allowed or disallowed and ordered paid as may be possible or proper at the proper time during the progress of this litigation.

26 Counsel on the respective sides will at once prepare all orders necessary or proper under this expression of the Court's views, and after agreeing upon the form of the same between themselves, immediately submit the same to the Court for its approval, and should they fail to agree, the Court will, upon application, settle the same. The Receiver, after he qualifies, will mail proper circulars to all creditors and others interested setting out the substance of this action of the Court.

B. S. RODEY, *Judge.*

July 20, 1908.

(Filed July 22, 1908.)

No. 564.

RAMÓN VALDES

vs.

CENTRAL ALTAGRACIA, INC.

No. 565.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMON VALDES and NEVERS & CALLAGHAN.

Now on this 20th day of July, A. D. 1908, the application for the appointment of a Receiver of all the property of the said Central Altgracia, Incorporated, made at the same time by the complainants respectively in the above entitled suits, comes on finally to be heard; at which hearing are present in open court the respective parties, to wit: Ramon Valdes, represented by his solicitor Thomas D. Mott, Jr., Esq., the Central Altgracia, Incorporated, represented by its solicitor F. L. Cornwell, Esq., and Nevers & Callaghan, represented by their solicitor F. H. Dexter, Esq.; and also the intervening creditors William V. Rowe, as Assignee of the firm of J. M. Ceballos & Company, American Colonial Bank, F. L. Cornwell and N. B. K. Pettingill, all represented by the last named in his own behalf and as solicitor for the others named; and the said

application having been heretofore fully investigated and considered by the Court at Chambers, and the court being fully advised in the premises; it is, now, hereby

27 Ordered and decreed that the resignation of H. H. Scoville, Esq., heretofore appointed by order of the 3rd day of June, 1908, Temporary Receiver and Custodian of the property of said corporation in these suits, is hereby accepted; that the said H. H. Scoville, Esq., be, and he is hereby, named and appointed as the Permanent Receiver of this court of all and singular the property of whatever kind or nature belonging to the said Central Altagracia, Incorporated, a corporation existing under the laws of the State of Maine, or to said Ramon Valdes, and commonly known by the name of Central Altagracia, including all its buildings, machinery, supplies, furniture, live stock, railroad spurs, side-tracks, switches, scales and material of every name, nature and description whatsoever; also all its stocks, promissory notes and other obligations, choses in action, accounts, rights under contracts of all kinds including the contract of leasehold under which said corporation acquired the premises now occupied by it, and all its tolls, income, profits and assets of every description whatsoever; that said Receiver be, and he hereby is, authorized and directed to take immediate possession of all and singular the property, rights and assets above described or referred to, wherever situated or found, to preserve and care for the same and maintain it in proper condition and repair so that it may safely and advantageously be used, and to run, manage and operate the said factory or plant for the manufacture of sugar under the orders of the Court to be entered, whenever the proper season for such operation shall begin, and to employ such persons as clerks and employees and make such payments and disbursements as may be needful and proper in so doing.

It is hereby further ordered that the said Receiver, within the next 30 days, file with the clerk of this court a proper bond with either personal or corporate security to be approved by the Judge in the penal sum of Ten Thousand Dollars (\$10,000.), con-

28 ditioned for the faithful discharge of his duties and to account for all the property and funds coming into his hands according to the order of this court; and that said Receiver take and file a proper oath for the due performance of his duties in the premises.

Each and every of the officers, directors, agents or employees of said Central Altagracia, Incorporated, each and every of the other parties to the above entitled suits, and all creditors and other persons or corporations, are hereby required and commanded to turn over and deliver to said Receiver, or his duly constituted representative, any and all property, books of account, vouchers, deeds, leases, contracts, bills, notes, accounts, money, stocks or obligations, or other property in his or their hands, or under his or their control, and each and every of such directors, officers, agents, employees, persons and corporations, are hereby required and commanded to obey and conform to such orders as may be given to them from

time to time by such Receiver in conducting the operations of said property and in discharging his duty as such Receiver.

And it is hereby further ordered that all officers, agents and servants of said Altagracia corporation, its creditors, all other parties to said suits and all other persons, be, and the same hereby are, restrained and enjoined during the pendency of this action from interfering with, transferring, selling, or disposing of in any way, any of the property, rights or assets hereby placed in the custody of said Receiver, or from taking possession of or in any way interfering with the same or any part thereof, or from interfering in any manner with the possession or management of any part of said property, rights or assets by said Receiver, or from interfering in any manner to prevent the discharge by him of his duties or the custody and operation of said property and plant under the order

of this court. And it is specifically hereby ordered that any 29 further proceedings under the execution issued out of this court in favor of the defendants Nevers & Callaghan against said Central Altagracia, Incorporated, or the issuance of any alias execution therein, be suspended until the further order of this court.

It is hereby further ordered that said Receiver be, and he hereby is, authorized and permitted at once to borrow money and to issue Receiver's Certificates or promissory notes therefor which shall be a lien prior and superior to all others upon all the right and title of either of the complainants in the above entitled suits in and to all the property, rights and assets in said bills of complaint or in this order described, whether such property, rights and assets are claimed by said Central Altagracia or by said Ramon Valdés; but such lien shall not affect the rights if any of the Sucesion of Sanchez de Larragoiti in the fee or under their contract; that the amount of such Receiver's Certificates or notes to be issued at present shall not exceed Ten Thousand Dollars (\$10,000) of which not more than Six Thousand Dollars (\$6,000) shall be issued without a report of the intended disposition of the same and a further leave of court, the said balance to be issued when and if required after such leave, and the question of the issuance of Receiver's Certificates or notes to any larger amount than said ten thousand dollars to remain open until such an emergency may arise and the Court authorizes the same; that the Receiver's Certificates or notes so to be issued shall bear interest from the time each loan may be made at as low a rate as may be obtainable but in no event to exceed 9% per annum; and that such loans shall not be negotiated for longer periods than nine months.

It is hereby further ordered that, out of the money so borrowed as aforesaid, said Receiver pay to the colonos of said Central 30 Altagracia such sums as may be found due any of them for cane delivered to its factory for grinding during the past season, to the Insular Government such amounts as may be due it for taxes upon the said property in his hands, to himself the salary due him as Temporary Receiver and Custodian under the previous order of this court, aforesaid, which is hereby fixed and allowed at

the sum of Five Hundred Dollars (\$500.), and to such employees of the Altagracia corporation during the past season as remain unpaid in whole or in part the amounts which may respectively remain so due and unpaid according to the books and records of said corporation; and that the balance of the said sum first to be borrowed shall be used for monthly payrolls and, if found necessary, in advances to colonos making new contracts for the grinding of their cane, for which the Receiver shall take the usual best security in that behalf.

It is further hereby ordered that said Receiver shall at once discharge all unnecessary salaried officers, employees and help for the remainder of the idle season; provided that he may retain, if necessary, one assistant at a salary not to exceed Sixty Dollars (\$60); that said Receiver shall, by himself and with the aid of said assistant (if one is retained) use his best and urgent endeavors to secure cane-grinding contracts on behalf of said Altagracia corporation in as large quantity and for as long terms as possible and report his proceedings in that regard and the result thereof to the court at convenient intervals but at least monthly; and that, whenever said Receiver finds opportunity to secure any such contracts by making advances of money to the prospective colonos upon proper security to an amount beyond what said Receiver may at such time be authorized to borrow or have on hand to be devoted to such objects.

31 said Receiver may apply to the court for further authority in the premises, and all such applications will be considered and passed upon in the light of conditions as they then exist, the paramount desire of the court being to preserve said property as a going concern for the greatest ultimate benefit of creditors and stockholders and to that end the best efforts of said Receiver and all concerned must be directed to the securing of cane-grinding contracts as the matter of primary importance.

It is hereby further ordered that said Receiver collect such accounts owing to said Altagracia corporation as he may be able and also realize such money as possible by the sale or handling of any molasses or other product that may now remain on hand; that he shall file monthly reports with the court, including itemized accounts of his receipts and disbursements, which accounts as well as those filed or to be filed with reference to his Temporary Receivership shall be subject to exceptions by the parties and review by the court; and that said Receiver shall permit no interference by any of the parties contrary to his own views as to the actual conduct or management of the estate in his hands, and shall report to the court any act or thing done by any of such parties or their representatives that may in his judgment not tend to the welfare of the same. The salary of said Receiver shall be the sum of Three Hundred Dollars (\$300) per month, beginning from the first day of August, 1908.

Said Receiver is hereby fully authorized and empowered to institute and prosecute such suits as may be necessary in his judgment for the proper protection of the property and trust hereby vested in him, and to likewise defend all such actions instituted against him

as such Receiver, and also to come in and take the prosecution or defense of any of the suits now pending in which Central Altagracia is a party, the present attorneys of said corporation being hereby directed to proceed with said pending litigation under the direction of said Receiver.

32 It is hereby further ordered that all creditors of said Central Altagracia, Incorporated, and all persons claiming any lien or other right against any of the property coming into the custody and control of the Receiver of this court herein, must file their accounts either with said Receiver or with this court, as they may be advised, and said Receiver shall give notice to all such creditors and claimants shown by the books of said corporation of this provision of this order and of the substance of the action now taken by the court. All such claims will be hereafter duly heard and considered by the court, and allowed or disallowed with such effect upon the property in said Receiver's hands as may be in accordance with law and equity.

And, lastly, it is hereby ordered that, in consideration of the controversies which the court can see are possible to arise between the conflicting interests represented in this litigation and of the importance to the conservation of said property to postpone such controversies for the present, and delay on the part of any of the parties hereto or of the stockholders of said Central Altagracia in asserting by suit supposed rights or liabilities as between themselves or against one another, during the pendency of this Receivership, shall not be considered or held to be equivalent to or in the nature of laches in the assertion of such rights or the claim of such liability.

All matters of whatever nature not included in or covered by the terms of this order are hereby reserved for the further order of the court.

Done and ordered in open court at San Juan, this 22nd day of July, A. D. 1908.

B. S. RODEY, *Judge.*

33

(Filed July 23, 1908.)

Equity. No. 564.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

Equity. No. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Consolidated.

Appearance of Nevers & Callaghan to the Suit Instituted by Central Altagracia, Incorporated, and Their Demurra to its Bill of Complaint.

Never & Callaghan, Defendants above-mentioned, a copartnership composed of George C. Nevers and James G. Callaghan, by and through their undersigned Solicitor, Francis H. Dexter, enter their appearance to the above-entitled suit instituted by the Central Altagracia, Incorporated, against them and Ramón Valdés and they hereby demur to the Bill of Complaint filed herein by the said Central Altagracia, Incorporated, for the reason that it sets forth no cause of action against these Defendants, nor prays any relief as against them, but said Bill of Complaint as to these Defendants is frivolous and without merit.

Wherefore they pray that the said bill of Complaint be dismissed as to them and that they be discharged with their costs.

San Juan, Porto Rico, July 23, 1908.

NEVERS & CALLAGHAN,

By their Solicitor, F. H. DEXTER.

Service of copy of foregoing accepted this — day of July, 1908.

Attorney for Central Altagracia, Inc.

34

(July 17, 1909.)

Equity. No. 564.

RAMÓN VALDES
vs.

CENTRAL ALTAGRACIA, INCORPORATED,

and

Equity. No. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDES and NEVERS & CALLAGHAN.

Consolidated.

Amended Demurrer of Nevers & Callaghan.

Nevers & Callaghan, defendants above-named, a co-partnership composed of George C. Nevers and James G. Callaghan, by and through their undersigned solicitor Francis H. Dexter, enter their appearance to the above entitled suit instituted by the Central Altagracia, Incorporated, against them and Ramon Valdes and they hereby demur to the bill of complaint filed herein by the said Central Altagracia, Incorporated, for the reason that it sets forth no cause of action or subject of equitable jurisdiction to justify the Court in granting relief as prayed or otherwise.

Wherefore, they pray that the said bill of complaint be dismissed and that they be discharged with their costs.

Mayaguez, Porto Rico, July 12, 1909.

NEVERS & CALLAGHAN,

By their Solicitor, F. H. DEXTER.

35

Journal Entry, July 21, 1909.

#579, San Juan. Law.

ANTONIO J. L. SANCHEZ DE LARRAGOITI et al., Composing the Cucu
or Estate of Joaquin Sanchez de Larragoiti, Deceased,

vs.

SALVADOR CASTELLÓ, CENTRAL ALTAGRACIA, et al.

203, Equity. Mayaguez.

SALVADOR CASTELLÓ et al.

vs.

CENTRAL ALTAGRACIA, INC., and H. H. SCOVILLE, Receiver.

516, San Juan. Law.

NEVERS & CALLAGHAN

vs.

CENTRAL ALTAGRACIA.

563, Law. San Juan.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.

No. 564, San Juan. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

No. 565, San Juan. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS et al.

The Court having recently heretofore held a joint conference with all counsel in all of the above entitled causes involving the property and rights in and to the property known as the Central Altagracia, on this day sends a Memorandum to the files (which Counsel are directed to examine) setting forth its views in the premises, and its intention to bring the litigation, receivership, etc., regarding this property to an end and of causing immediate issue to be raised on the pleadings for that purpose, and in consequence with said 36 memorandum, it ordered: That nothing is to be done in suit #579 as the same is on appeal to the Supreme Court of the United States (unless such appeal should be dismissed).

That the Demurrer in suit #203 be and the same hereby is overruled.

That the matter of stay of Execution now existing regarding suit #516, now in force, and the question of whether or not a lien exists under said execution and its priority will be considered in the issues to be tried the coming week.

That the Demurrer in suit #563 will be permitted to remain in abeyance for a short time until issue in 564 and 565 is decided.

That the demurrers in suits 564 and 565 consolidated, be and they hereby are, overruled and respondents in each case are required to answer on or before Monday the 26th instant so that a trial of the issue thus raised can be begun upon the following day before the Court without the intervention of an Examiner or Master. Provided that nothing in this order shall prevent the parties in either case, as may be proper, from immediately amending their Bills or from filing a Cross-Bill in addition to an Answer, but in such case, the latter shall be considered as denied, and issue made as may be proper so that the trial may proceed notwithstanding.

(Filed July 21st, 1909.)

The Central Altagracia, Incorporated, Cases.

Memorandum.

There are six suits pending in this court, five in the San Juan Division and one in the Mayaguez Division, relating to the property mentioned in the title. The property is now, and has been for about a year last past, in the hands of a receiver of this court. The receivership, in so far as keeping the property as a going concern without running in debt, has been an unfortunate failure. It has run in debt during the year's receivership, all told about seventeen thousand dollars, and more than half that amount is represented by outstanding receiver's certificates.

37 This deplorable condition resulted in the Court calling all counsel interested before it at Mayaguez on the evening of the seventeenth day of July, instant, when, after some consultation between the Court and the several counsel it was announced from the bench that the Court would soon take some action with a view to settling the many conflicting rights regarding the property.

Suit No. 579 is a bill in equity by the Sanchez de Larragoiti heirs against practically everybody else connected with the matter. These heirs are the owners of the original plant and the twenty-two acres of ground it is situated on, and leased it to one Salvador Castelló and his brother Gerardo some three or four years ago for a term of twenty years. These lessees transferred their whole rights in the property and the lease to parties who organized the present corporation known as the Central Altagracia, Incorporated, and that concern in one way and another is said to have put about a quarter of a million dollars' worth of improvements on the place and is also said to be largely indebted as a consequence thereof. This suit is now pending on appeal to the Supreme Court of the United States in consequence

of the Court having held it in abeyance until it could permit all the other rights to be litigated.

Suit No. 203 in the Mayaguez Division is also a bill in equity by these lessees Salvador Castelló and Gerardo Castelló against the aforesaid corporation, Central Altamaria, Incorporated, alleging that the latter has violated all the terms of the contract between the parties, and praying that the same be cancelled and they restored to their original rights and the corporation enjoined from hereafter asserting any rights at all in or to the property in question.

Suit No. 516 is a judgment at law in the San Juan Division with a levy thereunder on the property in question for about seventeen thousand dollars in favor of the firm of Nevers & Callaghan of New York against the said Central Altamaria, Incorporated, for 38 machinery furnished to and used in the erection of the sugar plant, as it is said, the execution being held in abeyance by this court pending this litigation.

Suit No. 563 is a straight suit at law in the San Juan Division by Ramon Valdes against the Central Altamaria, Incorporated, to eject the latter from the possession of the plant in question on the ground that the plaintiff is the sole owner thereof and that the defendant corporation is wrongfully in possession under condition broken of the contract between the parties. It is pending on demurrer.

Suit No. 564 is a bill in equity by Ramón Valdes against the Central Altamaria, Incorporated, and is, according to its terms, brought in aid of his suit at law No. 563 aforesaid. The bill is little more than a petition for a receiver to preserve the property as a going concern until the suit at law could be pressed to judgment. Under it, coupled with suit No. 565 mentioned next below, the receiver was appointed and has been acting for a year, as first above in this memorandum stated. This bill is pending on demurrer.

Suit No. 565 is a bill in equity and is just the reverse of No. 564 last aforesaid. It is brought by the Central Altamaria, Incorporated, against Ramon Valdes and Nevers & Callaghan, alleging that the said Valdes falsely claims to be the owner of the property and that he as an officer of the complainant corporation was mismanaging the property and was failing to protect the same against the judgment of Nevers & Callaghan, and makes many other allegations in the premises. This suit is also pending on Demurrer. This suit and No. 564 were consolidated for the purpose of the receivership and several of the others endeavored to intervene therein.

We are strongly pressed to bring on law suit No. 563 of Ramón Valdes against this Central for trial, and to give him immediate possession of the premises as the owner thereof. This is strenuously objected to by the other officers of the Central Altamaria, and also by counsel for Nevers & Callaghan, and incidentally by the same counsel for the Sanchez de Larragoiti heirs, although the suit regarding the latter is on appeal. After examining into the matter, we regard the effort to press Mr. Valdes' suit at law, under all the circumstances of the case as preposterous and wholly unwarranted at this time. If the allegations, or any large portion of them, in the bill in suit No. 565 are true, which we are not

asserting, he has no right to maintain the suit at law, but we are not passing upon that fact either at this time. The court cannot be induced to believe on the mere allegation of one party, when that is denied by the opposite party, that the officers of the Central Altagracia, Incorporated, gave away to Mr. Valdes the entire rights of all the stockholders and all the general creditors and sold the entire lease interest and all the machinery of the plant for sixty-five thousand dollars, or any other such sum, when the same is alleged to be worth nearly a quarter of a million.

We have concluded that the first thing to be done is to try out the rights of the Central Altagracia, Incorporated, and Mr. Valdes to a definite finish, and we are of opinion that that can be better done in a suit in equity than otherwise. We have examined the contracts that were furnished us, which are said to be a basis for Mr. Valdes' suit No. 563 at law and we are certain that to try the law suit at this time before the consolidated suits in equity, Nos. 564 and 565, would be wholly unsatisfactory and might work great injustice to others than the Central Altagracia even. It must be determined whether Mr. Valdes is a mere general creditor of the Central Altagracia, as the latter claims, or whether he is simply a mortgagee with a more or less prior lien, or whether his claim to be the 40 actual owner of the machinery of the plant and of all the lease rights therein of the Altagracia for the sixteen years of the term thereof yet to run is well founded. It must further be determined whether his mortgage lien, if he has one, is superior to Nevers & Callaghan's alleged judgment lien and superior to the alleged rights of the Castelló brothers, and that of the creditors generally, and this, in our opinion, can be done in no other way so satisfactorily as by causing issue to be joined in the consolidated suits and proceed to a hearing on the same at once.

It seems to us that the whole matter should be litigated in one proceeding as far as possible. Therefore the suit at law No. 563 will still be held in abeyance for a short time. The demurrers in Nos. 564 and 565 will be overruled and each of the parties required to answer fully by Monday morning next. The answer in No. 565 by Mr. Valdes may, if necessary, be coupled with a cross-bill asserting all his rights of ownership which he expects to introduce as proofs in the law suit No. 563.

The Castelló suit will also be held in abeyance until the determination of the principal issue between Valdes and the corporation, but an issue must be raised therein at once by proper answer and the demurrer will be overruled pro forma for that purpose, and the proofs therein will be taken immediately after the proofs in suits Nos. 564 and 565, and it may if necessary be consolidated for the purposes of final decree. We see no necessity for doing anything with reference to the rights of the Sanchez de Larragoiti heirs as they probably cannot be affected by anything we do in these matters.

The court now desires to notify all counsel and parties that it is not inclined to tolerate any interference with its program as here indicated, or at least with its determination to bring this unfortunate situation to a speedy end. Nor will it permit the pretended dis-

satisfaction or impatience of any of the parties to prevent such speedy determination of the matter. But this is not intended to mean that it is not willing and ready to receive all proper and respectful suggestions of modifications in the program as it progresses with a view to facilitating matters, but on the contrary it invites the aid and help of counsel and hopes that it will receive the same to the fullest extent that all counsel may be able to give it.

41 The Court has a lot of receiver's certificates and debts outstanding that are a lien superior at least to any claim Mr. Valdes can have in the premises, and it must protect them. As to whether or not such debts and receiver's certificates are superior to any rights Nevers & Callaghan may have, if they have any, is a question that will be determined. Nevers & Callaghan are respondents in suit No. 565 so their rights will be litigated and settled in the same decree, and they will be required to file an answer as their demurrer is also overruled pro forma.

The Court therefore, beginning on Tuesday morning next after the answers are in, will proceed without the intervention of an examiner or master to hear the evidence itself, and will settle the rights of the parties as best it can.

The Court will determine during the remainder of this week or during the week while it is taking the evidence, as stated, what it will do with the plant itself and whether it will continue it in the possession of a mere custodian under the present receiver or discharge the present receiver and appoint a new one as custodian or appoint a new one at a low salary and under a proper bond to make preparations to keep the plant as a going concern.

In any event it is suggested that if Mr. Valdes shall be held to be the owner of the machinery and the lease rights, he will be given possession. If he is held to be a mere general creditor and no lien is established against the premises, the rights of the parties in the property will be ordered sold as may be deemed best, and this with the least delay possible.

42 In other words, the object of the Court now is to get complete title in some one person or corporation in that property, or at least in the leasehold right therein.

It is here suggested that if anyone of the parties to this litigation can become possessed of the alleged rights of one or more of the others, even including the rights of the Sanchez de Larragoiti heirs, and pay or assume with the consent of the owners thereof the receivership debts, it will greatly simplify this badly mixed and unfortunate legal controversy, and the quicker the same is done, the better.

B. S. RODEY, *Judge.*

Amended Bill of Complaint.

(Filed July 22, 1909.)

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, in Chancery Sitting:

Central Altagracia, Incorporated, a corporation duly organized and existing under the laws of the State of Maine and a citizen of said State, brings this its bill of complaint against Ramón Valdes, who is a subject of the King of Spain residing in Porto Rico, and George C. Nevers, George B. Ackerson, and James G. Callaghan, as co-partners doing business under the firm name of Nevers & Callaghan, who are each and all citizens and residents of the city and State of New York.

And thereupon your orator, complaining, says that, while it is, as above alleged, organized and exists under the laws of the State of Maine, its principal and only business is the running of a factory for the grinding of sugar cane and production of sugar therefrom, situated in the Añasco Valley, near the city of Mayaguez, Porto Rico; and that it is duly authorized and licensed to carry on business within this jurisdiction by the Territorial Government called the "People of Porto Rico."

43 Your orator further alleges that during or about the month of March, A. D. 1907, finding itself in need of additional ready money to meet its maturing obligations, it negotiated a loan from the defendant Ramon Valdes, through its proper officers, for the sum of \$35,000 which it agreed to repay to said Valdes on or before the 1st day of April, 1908, with interest at the rate of 10% per annum, and as an additional consideration for the making of said loan, it was agreed by the managing officers of your orator that said Valdes should be chosen a Director and Vice President thereof at a salary of \$3,000 per year, which agreement was carried out.

Your orator further alleges that during or about the month of June, 1907, the same being at the end of the grinding season for that year, the Director of your orator, after taking the advice of expert engineers, determined that it was necessary for the welfare of the Company to raise an additional loan of \$30,000 for the purpose of repairing and re-arranging the machinery already in its factory and purchasing additional machinery, and the President and Treasurer of your orator went to New York City for the purpose of negotiating a loan of sufficient amount to cover the above needs and also to pay off certain indebtedness then existing including the debt of said defendant Valdes and the debt of said defendants Nevers & Callaghan, which has since been reduced to judgment as will hereinafter more fully appear; that upon their arrival in New York said President and Treasurer submitted their plan to defendant Valdes, who approved and agreed to the same, and thereafter during their sojourn in New York for the purpose aforesaid said President and Treasurer entered into negotiations with several parties as well as opening further negotiations with said defendant

Valdes, then Vice President of your orator as aforesaid; and pending the conclusion of their different endeavors to effect a loan a

44 preliminary agreement was arrived at with defendant Valdes whereby he was to advance to your orator the funds necessary to purchase the needed machinery and, if said officers of your orator were able to return said advances with certain commissions and interest before the 18th day of September, 1907, said Valdes was to accept the same, and in case of the failure so to return said advances, the same and such other advances as might be agreed upon thereafter were to be regarded as a refaccion debt and the power documents for that purpose were to be executed; that matters between your orator and said defendant Valdes remained in that condition until about the 15th day of October, 1907, at which time, said officers of your orator, not having been able to return the said advances, and further negotiations having resulted in an agreement between said defendant Valdes and the holders of a majority of the stock on behalf of your orator, the same persons also constituting a majority of the Board of Directors, that, in consideration of the promise of said defendant to make said loan and finance the Company, he should be elected a member of the Board of Directors and President of the corporation for a period of four years, or until the indebtedness of your orator to him should be paid off, at a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of your orator of the par value of \$15,000, (which was all that was remaining in the treasury), the proper documents were duly drawn and executed as desired by said defendant for carrying into effect the arrangement aforesaid in the office of Curtis, Mallett-Prevost & Colt, of New York City, the said stock was transferred without further consideration, and said defendant Valdes was elected President he already being a member of the Board of Directors of your orator, and the former

President, F. L. Cornwell, Esq., was elected Vice-President.

45 But your orator alleges that after said defendant Valdes has obtained from the other officers of the Company the execution of the documents aforesaid he at once, even before the parties signing said agreement had left New York, began to claim that a part of said contract was that he should also name a majority of the Board of Directors and to urge upon the remaining Directors the recognition of that right, and upon the refusal of the recognition of the Board to accede to his wishes he proceeded arbitrarily to usurp the powers of the Board as hereinafter set forth.

Your orator further alleges that, after said defendant Valdes became President of your orator in the manner aforesaid he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent Chief Engineer in charge of the running of the man-

chinery against the protest of the other members of the Board upon the accidental death of the regularly appointed chief, and in all respects to manage the business of your orator according to his individual will and caprice, even objecting to the presence of any of the other officials of the Company in or about its factory when not accompanied by said Valdes. That from the time of the election of said Valdes as President as aforesaid until the present day not one dollar of the funds of the Company has passed through the hands of the Treasurer but every dollar thereof has been collected and disbursed by said Valdes, or by those acting under his direction, so that said Treasurer, in order to avoid responsibility for the usurping acts of said defendant Valdes over which he had no control, was forced to act under a provision of the by-laws of your
46 orator and ask the Board of Directors to allow him to sur-
render the performance of his duties as Treasurer to said Valdes by way of substitution, and has been ever since ignored in respect to such duties.

Your orator therefore alleges that said defendant Valdes never in fact loaned any amount to your orator beyond the first loan of \$35,000 hereinbefore referred to but had expended whatever amount he may have spent in your orator's business, with the exception of the price paid for a portion of the machinery purchased and some of the reconstruction work, without the knowledge, consent or authority of your orator's Board of Directors and without any part of the same passing through the treasury; that the total amount claimed to have been expended by said defendant in your orator's business is far in excess of any expenditure authorized or contemplated by said Board of Directors and far more than the financial condition of your orator warranted; and that a large portion thereof has been expended without benefit or advantage to your orator.

Your orator further alleges that after the making of the preliminary agreement between the officers of your orator and said Valdes in New York and the beginning of the purchase of machinery by him and making of repairs in the factory the said Valdes assumed the active and entire management and control of the business and the financing of your orator, sent his agents to your orator's factory to take charge there and, through said agents spread throughout the community of Mayaguez the report that said defendant had been obliged to take over the property and business of your orator on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed and had no further connection with said business, and that said defendant had purchased and was the owner of said factory and machinery and all the property of your orator included in its said plant, the said defendant all the while well knowing that said individuals were

47 still respectively Vice-President and Treasurer of your orator and still members of its Board of Directors; all of which acts tended greatly to the injury of your orator in depriving those who would otherwise have dealt with it of all confidence in the stability of its business and tending to cause suspicion of the character and ability

of its officials, other than said President. Thereby destroying its credit as an entity, which it had built up and theretofore enjoyed generally in this community and more especially with its colonos.

Your orator further alleges that said defendant, instead of carrying out his said agreement with your orator to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and to which he has now brought a suit at law in this court to establish his title, yet he has at all times claimed and still claims that your orator is indebted to him for the price of said machinery. That said defendant also proceeded to procure and enter into contracts for the grinding of sugar cane in his own name, and the leasing of the Hacienda Carmelita in Cabo Rojo, instead of in the name of your orator, and in some instances the cane so bought has been entered in the books of your orator as purchased at a higher price than that named in the individual contract with the defendant; all which was in direct violation of his duty to your orator as its President and managing officer and to the financial injury of your orator.

Your orator further alleges that said defendant Valdes before the beginning of the grinding season which is just closing was guilty of inexcusable extravagance in the work preparatory to such season and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding

48 the management of orator's factory, under the direction of said defendant as President, has been both extravagant

and incompetent, that soon after the season commenced he discharged from orator's employment the only employee competent to manage the sugar-making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of such machinery of the complicated and up-to-date kind contained in said factory; that he has continued as Chief Engineer during the whole of the crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colonos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been irregular causing increased expense in grinding and decreased results in sugar; that in the midst of the grinding season he absented himself from the Island for a period of nearly two months, during which time his manager left in charge was without authority or discretion in action as well as without funds properly to conduct your orator's business; that, in short, the extravagance and incompetence of the management of said defendant was such that, notwithstanding the perfect condition of the machinery in said factory and the unusual high price of sugar during all of said grinding season, the operations of your orator's factory show practically no profit and, considered in connection with the general expenses of your orator for the year show a positive loss, and the amount of sugar produced only three-fourths as much as

either of the previous years of your orator's existence, notwithstanding the increase in amount and improvement in arrangements of its machinery over previous years; and that said defendant has allowed the existing cane contracts of your orator to lapse, has made no successful efforts to extend these which have expired, and the few new ones obtained have been made only for the one crop which is now at an end.

Your orator further alleges that said defendant Valdes expended several thousands of dollars in the purchase of scales for the 49 weighing of cane and erected the same at various places along the line of the railroad, but said expenditure resulted practically without benefit as only a small amount of cane was purchased at any of said scales on account of the refusal of said defendant on behalf of your orator to pay the competitive rates which other buyers were paying, while on one occasion purchasing outright cane upon which your orator suffered a considerable loss.

Your orator further alleges that said defendant, since occupying the office of President, has purchased in his own name a large amount of the indebtedness owing by your orator at a large discount from the face value thereof, but instead of allowing your orator the benefit of the reduced price at which the same was acquired, and instead of using said money for the advantage of your orator in acquiring cane contracts, of which your orator was in great need, said defendant has demanded and is now demanding of your orator's Board of Directors that entries be authorized in its books of account transferring said indebtedness into the name and favor of said defendant for the amount of its full face value and interest.

Your orator further alleges that in the month of November, 1907, after defendant and his agents had been in full possession and control of the books and accounts of your orator since the preceding August, defendant made an offer of sixty cents on the dollar of the par value of orator's capital stock for a controlling interest therein, but after being in full control and management of all your orator's business during an entire sugar season, although he claims that said season has been a prosperous and successful one, defendant has stated that said stock is worth practically nothing.

Your orator further alleges that on the 16th day of May, 1908, judgment was recovered in this court by the said defendants Nevers & Callaghan against your orator for the sum of about \$17,000 upon which execution has been issued and levied upon said machinery and factory of your orator, yet said defendant Valdes as 50 President of your orator has done nothing to avoid said execution and levy. That, although said defendant has had entire charge and control of the financial operations of your orator since his election as President, and has been charged with the duty as such of providing for means of paying the most pressing indebtedness of your orator, yet he has made no provision for the payment to himself of the interest now claimed to be due upon the loans claimed to have been made by him to your orator, or under the contract alleged to constitute a conditional sale to him of your orator's plant and machinery, and is even now bringing a suit in

this court to declare a forfeiture of the title of your orator to its said property because of the non-payment of said alleged interest, as hereinafter stated. That the suit at law aforesaid, which is No. 563 on the Law Docket of this Court, is based upon one of the documents executed between your orator and said defendant, Valdes, at the office of Curtiss, Mallet-Prevost & Colts in New York City at the time said Valdes agreed to make the additional loan to your orator as hereinbefore alleged, but the complaint therein does not set forth sufficient of the facts involved in said transaction to allow your orator to make the defense thereto which equity and good conscience require; that the other document executed at the same time between the same parties and all the facts and circumstances surrounding the transaction conclusively show that said transaction in fact constituted a loan from said Valdes to your orator, which said Valdes claimed to be in the nature of a refaccion loan, and not a sale of property by said Valdes to your orator, conditional or otherwise, as your orator had up to that moment been the undisputed owner of said property and executed in favor of said Valdes the document which is claimed to have conveyed title thereto to said Valdes solely and only for the purpose of aiding said Valdes in his endeavor to obtain refaccion security upon said property for his said loans, and

51 not with any intention or design on the part of either party at that time to obtain title thereto. Wherefore your orator alleges that by the further prosecution of said suit at law great and irreparable injury may be done to your orator, and such further prosecution thereof should be enjoined by the order and injunction of this honorable court.

Your orator further alleges that, in case of each of the loans so made to it by defendant Valdes as hereinbefore set forth, the said Valdes required, demanded and obtained from your orator as a part of each loan agreement the payment as compensation for the use of the money loaned a rent or rate of interest greater than was then or is now allowed by law to be charged or collected, although a part of such compensation or rent was, in order to avoid the penalties of usury, disguised in the form of salary or stock compensation, yet your orator avers that said loan contracts were each and all in truth and in fact usurious, and for that reason said defendant Valdes is not entitled to collect any part of the interest stipulated for in said contract, but all of said interest now accrued, as well as any which might otherwise accrue in the future, has been wholly forfeited, and said defendant is also liable to be required to repay to your orator whatever sums he may have received as the salary stipulated for as part of the rent or compensation for said loans.

Your orator further alleges that there are practically no lands annexed to, or which pertain to, the factory of your orator which can supply the same with cane for the purpose of grinding, so that it is necessary in order that said factory may grind cane and manufacture sugar that your orator should have contracts with the growers of cane for the delivery of the same for grinding, which contracts are usually made in the months of June and following; that said Valdes has failed to provide contracts for cane to the extent

needed by your orator as above set forth, and that further delay in the making of the same will endanger the business of your
52 orator and render it liable for large loss; that for the obtaining of a sufficient number of such contracts advances of con-
siderable quantities of money to the cane growers will be necessary; that the value of your orator's said property depends on its carrying on its said business and continuing as a going concern; that your orator has a large unsecured indebtedness beside that owing to defendant Valdes, and, unless a receiver is appointed, its said creditors will severally bring suits and recover judgments as defendants Nevers and Callaghan have done; and that such judgments will be followed by levy and sale thereunder of separate parcels of your orator's property for a small fraction of their real value; by which means the property of your orator will be frittered away to the great damage of both creditors and stockholders.

Your orator therefore avers that a Receiver should be appointed by and under the authority of this court to take charge and control of all and singular the property of your orator and to carry on its said business for the benefit of its creditors until its debts can be discharged or properly funded so that both creditors and stockholders may be secured or paid.

To the end, therefore, that your orator may have that relief which can only be obtained in a court of equity, and that defendant Ramon Valdes and the defendants George C. Nevers, George B. Ackerson and James C. Callaghan, as copartners under the name of Nevers & Callaghan, may answer this bill, but not upon oath, the benefit whereof is hereby expressly waived; that the transaction between your orator and defendant Valdes, which was consummated by the execution of the documents aforesaid at the office of Curtiss, Mallet-Prevost & Colt in New York City, one of which documents is the basis of the suit No. 563 on the law side of this court, as hereinbefore alleged, may be decreed to have constituted a loan of money and not a sale of property; that said loan may be decreed to have been made at a usurious rent or rate of interest, and in consequence
53 thereof all interest thereon already accrued or hereafter to accrue to have been forfeited; that said defendant Valdes may be enjoined pendente lite from further proceeding with said cause No. 563 on the law side of this court and said injunction by the final decree herein be made perpetual; that said defendant Valdes may be decreed to have purchased whatever indebtedness of your orator to third parties he may be found by the final decree to own as trustee for and on behalf of your orator and be limited in any recovery from your orator on account thereof to the value or amount found by the court to have been paid by him therefor; that this court may ascertain and determine from the evidence to be produced before it what amount of money damage your orator has sustained by reason of the incompetence, mismanagement and unauthorized and wrongful acts of said defendant Valdes, pretending to act under his authority as President or otherwise and deduct the same from whatever amount of indebtedness may be found due the defendant on final hearing and that defendants Nevers & Callaghan

may be enjoined from enforcing the execution upon their judgment against the property of your orator pending the possession of the same by the Receiver of this court and until its further order; that a Receiver may be appointed for the purposes and responsibilities of receiver in such cases; that the defendants and all other persons may be enjoined from interfering with the possession or control of said receiver; and that your orator may have such other and further relief in the premises as equity may require and to your honor may seem meet.

May it please your Honor to grant unto your orator a writ of subpoena directed to the said defendants, Ramon Valdes, and George C. Nevers, George B. Ackerson, and James G. Callaghan, as co-partners doing business under the firm name of Nevers & Callaghan, commanding them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this 54 honorable Court, then and there to answer to this bill of complaint, and to stand to, perform and abide by such further orders, directions and decrees as to your Honor shall seem meet in the premises.

And your orator will ever pray,

N. B. K. PETTINGILL,
F. L. CORNWELL,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of Porto Rico:

F. L. Cornwell, being first duly sworn, says that he is Vice-President as well as counsel for the complainant Company, that its President Ramon Valdes, is one of the defendants, that he has read the foregoing bill and knows its contents and the statements therein made are true of his own knowledge.

F. L. CORNWELL.

Sworn to and subscribed before me, this 22nd day of July, 1909.

JOHN L. GAY,
Clerk U. S. Dis. Court.

Journal Entry, July 24, 1908.

No. 564. Equity. San Juan.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.

Now comes N. B. K. Pettingill, of counsel for defendant in the above entitled cause and files Answer and two Exhibits marked respectively "A" and "B" to bill of Complaint herein.

(Filed July 24, 1909.)

RAMÓN VALDES

vs.

CENTRAL ALTAGRACIA, INCORPORATED.

The Answer of Central Altagracia, Inc., to the Bill of Complaint of Ramon Valdes, Complainant.

This defendant now and at all times hereafter saving to itself all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties or imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material and necessary for it to make answer to, answering says:

I.

Defendant admits the truth of the allegations contained in paragraphs I and II of said bill of complaint, except the allegation that the complainant, Ramon Valdes, is a resident of the Island of Porto Rico, which allegation defendant denies and alleges on the contrary that said complainant is a resident of the city and State of New York, United States of America.

II.

Further answering defendant admits that on or about the date alleged in paragraph III of the complaint it entered into a written contract with the complainant the terms of which are substantially set forth in paragraphs III, IV, V and VI of said bill of complaint; but defendant denies that said contract was in its nature one of conditional sale or that its legal effect was to conditionally sell, assign or transfer to defendant the property in paragraph III described, or any property whatever. Defendant on the contrary alleges that said

contract set forth in the paragraphs aforesaid of said bill of

56 complaint is one of two contracts contemporaneous in time

and forming in fact parts of one and the same transaction between complainant and defendant; and that said transaction in truth and in fact constituted an agreement for a loan from complainant to defendant for the principal sum of \$65,000, which was to be repaid with interest at the rate of 10% per annum, payable semi-annually, said principal sum being payable in four equal installments at the times and in the manner set forth in paragraphs IV and V of said bill of complaint.

Defendant further alleges that the sum of \$35,000, part of said above-mentioned sum of \$65,000 had previously during the year 1907 been loaned by complainant to defendant under an agreement whereby the same was to be repaid to complainant in the month of April, 1908; that in the month of August, 1907, defendant, being in need of additional funds with which to purchase new machinery and remodel its plant, entered into negotiations with several parties in

the City of New York, including the complainant Valdes, who was then Vice-President of the defendant, for the purpose of obtaining a loan of sufficient amount to serve the purposes aforesaid and also to pay off certain indebtedness then existing, including the debt of \$35,000 to said complainant which was not yet due; that, pending the different endeavors of the officials of this defendant to effect the loan aforesaid, a preliminary agreement was entered into by said officials of defendant with said complainant, whereby the latter was to advance to defendant the funds necessary to purchase the needed machinery, and if said officers of defendant were able to return said advances with certain commissions and interest and also the said sum of \$35,000 with its interest before the 15th day of September, 1907, complainant was to accept the same, but in case of the failure so to return the above amounts, the same and such other advances

as might be thereafter agreed upon up to said sum of \$65,000
57 were to be regarded as a refaccion debt and the proper documents for that purpose were to be executed; that matters between complainant and defendant remained in the above condition until about the 15th day of October, 1907, and at that time, the officials of defendant not having been able to return to complainant the several sums aforesaid, further negotiations resulted in an agreement between complainant and defendant upon the following terms, to wit: that, in consideration of the promise of complainant to make said loan and finance the Company, he should be elected a member of the Board of Directors and President of the Corporation for a period of four years, or until said indebtedness of defendant to him should be paid off, with a salary of \$3,000 per annum, that he should have the right to appoint, subject to the approval of the Board, a Manager under him at a salary of \$2,500 per annum, and that he should receive as a bonus for such financing a block of 150 shares of the capital stock of defendant of the par value of \$15,000 (which was all that was remaining in the treasury) that thereafter complainant caused to be prepared in the office of Curtis, Mallet-Prevost & Colt of New York City, two certain documents in the form desired by him for carrying into effect the arrangement aforesaid, one of which documents was in form a conveyance by defendant to complainant of the property described as aforesaid, in complainant's bill, and the other was the document described in paragraphs III, IV, V and VI thereof aforesaid; and that the purpose and design of said documents and the legal effect of the same was to evidence a loan of money and not a conveyance of property, conditional or otherwise, as is alleged in complainant's bill of complaint. All of which will more fully appear from true and correct copies of said documents herewith filed as Exhibits "A" and "B" which are prayed to be considered as a part of this answer.

III.

Defendant denies that it went into possession of said premises and factory and took possession of said machinery and contract of lease by virtue of said contract of November 2, 1907, as alleged in paragraph VII of complainant's bill, but on

contrary alleges that it was already in possession of the property so described under an undisputed title and had been in such possession from the time said property had been acquired by it, by purchase from other parties, and that the complainant had never been in possession of, or had any control over or right to, the same.

IV.

Defendant admits that according to the terms of said contract the first installment to be paid thereunder together with interest on the total debt of \$65,000 from the date said contract became due on the 1st day of April, 1908, as alleged in paragraph VIII of complainant's bill, but denies that said contract was valid and enforceable according to its terms for the reason that, as hereinbefore set forth, complainant required, demanded and obtained from defendant as a part of each loan agreement the payment as compensation for the use of the money loaned a rent or rate of interest greater than was then or is now allowed by law to be charged or collected, although a part of such compensation or rent was, in order to avoid the penalties of usury, disguised in the form of salary or stock compensation; but defendant avers that said loan contracts were each and all in truth and in fact usurious, and for that reason complainant has forfeited all right to collect from defendant any part of said indebtedness or to enforce said contract against this defendant in any respect, or at least any and all interest on said indebtedness now accrued or hereafter to accrue has been wholly forfeited by the complainant; and that, therefore, in either of said events, as under the terms of said contract the first installment of principal to become due thereunder may be upon request extended for the further period

59 of one year, no cause of action had accrued to complainant at the time of the commencement of this suit or of the suit at law referred to in said bill of complaint.

V.

And for further answer defendant denies that complainant is entitled to the remedy or relief asked for in his bill of complaint herein or in his complaint in said suit at law No. 563; first, because by virtue of said contracts and agreement above set forth in paragraph II of this answer complainant obtained in law neither the legal title to the property referred to nor any lien or preference whatever thereon but became merely a general creditor of defendant to whatever amount this court may finally determine may be due thereunder, if anything; and second, because defendant became unable and was prevented from carrying out the terms of said agreement in so far as the payment of the installments and interest, which would have been due to complainant had he on his part faithfully complied with the terms of said agreement, in consequence of the wrongful acts and omissions of the complainant himself in respect to the defendant and its business and the heavy damage thereby inflicted upon it as herupon to be specified.

Defendant alleges that, after complainant became the President

of defendant corporation in pursuance of the said agreement set forth in said paragraph II hereof, he proceeded to control and manage its business without reference to the wishes, judgment or authority of its Board of Directors, to expend money for all purposes without the knowledge or authority of any other member of said Board, to change the plans for the reconstruction of the factory without such knowledge or authority, to install an incompetent chief engineer in charge of the running of the machinery against the protest of the other members of the Board in consequence of the accidental death of the regularly appointed chief, and in all respects to manage

the business and finances of defendant according to his individual will and caprice, even objecting to the presence of

any of the other officials of the company in or about its factory when not accompanied by complainant himself; that from the time of the election of complainant as President as aforesaid until the appointment of the receiver herein not one dollar of the funds of the Company has passed through the hands or within the control of the Treasurer of defendant corporation, but every dollar thereof has been collected and disbursed by complainant, or by those acting under his directions, so that defendant's Treasurer, in order to avoid responsibility for the usurping acts of complainant over which he had no control, was forced to take advantage of a provision of defendant's by-laws and ask its Board of Directors to allow him to surrender the performance of his duty as treasurer to complainant by way of substitution, and has been ever since ignored by complainant in respect to such duties. Defendant further avers that after the making of the preliminary agreement between complainant and defendant in New York and the beginning of the purchase of machinery by complainant and the making of repairs in defendant's factory, complainant assumed the active and entire management and control of the business and the financing of defendant, sent his agents to defendant's factory to take charge there and, through said agents, spread throughout *of* the community of Mayaguez the report that complainant had been obliged to take over the property and business of defendant on account of the inexperience, incompetence and extravagance of the President and Treasurer formerly in control of its affairs, that said individuals had been removed from office and had no further connection with defendant's business, and that complainant had purchased and was the owner of defendant's factory, machinery and all its property included in said plant, though complainant all the while well knew that said individuals were still respectively Vice-President and Treasurer of defendant and still

members of its Board of Directors.

61 Defendant further avers that complainant, instead of carrying out the agreement with defendant hereinbefore set forth to advance money to it for the purchase of machinery, proceeded to contract for and purchase machinery in his own name, to have the same shipped to himself individually as consignee, and to erect the same in the factory which he then and since has claimed to be his own and for the possession of which he has brought the suit at law described in his bill of complaint, while then and still claim-

ing that defendant is indebted to him for the price of said machinery, and that complainant also proceeded to procure and enter into contracts for the grinding of sugar cane and the leasing of the Hacienda Carmelita in Cabo Rojo in his own name, instead of in the name of defendant, and in some instances the cane so bought has been entered in the books of defendant as purchased at a higher price than that named in the individual contract with complainant, that before the beginning of the grinding season of 1908 complainant was guilty of inexcusable extravagance in the work preparatory to the grinding of the cane crop at defendant's factory and expended large sums in excess of what was reasonably necessary for that purpose; that after the beginning of said grinding complainant's management of said factory has been both extravagant and incompetent; that soon after the season commenced he discharged from said factory the only employee competent to manage the sugar making department, leaving the same in charge of persons wholly inexperienced and without skill in the handling of the complicated and up-to-date machinery contained in said factory; that he has continued as chief engineer during the whole crop a man known to him and demonstrated by his work to be incompetent; that he has so mismanaged the service of cane by the railroad cars that colmos have been unable to cut and haul cane to said cars with any regularity whereby the service of cane to said factory has been

62 continuously irregular, causing increased expense in grinding and decreased results in sugar; that in the midst of grinding season he absented himself from the Island for a period of nearly two months, during which time the manager left in charge by him was without authority or discretion in action as well as without funds properly to conduct the business of defendant; that, in short, the extravagance and incompetence of the management of complainant was such that, notwithstanding the perfect condition of the machinery in said factory and the high price of sugar during all of said grinding season, the operations of defendant's factory for that season showed practically no profit and, considered in connection with the general expenses of defendant for the year, showed a positive loss, and the amount of sugar produced was only three-fourths as much as either of the previous years defendant had operated, notwithstanding the increase and amount and improvement in arrangement of its machinery compared with previous years; and that complainant has also allowed the existing cane contracts of defendant to lapse, has made no successful efforts to extend those which have expired, while the few new contracts obtained have been made only for the one crop above referred to.

And defendant avers that each and all of the acts of complainant above set forth were in direct violation of his duty to defendant as its president and managing officer and tended greatly to the financial injury of defendant by depriving these who would otherwise have dealt with it of all confidence in the good management or stability of its business and causing doubt of the character and ability of its officials, whereby its credit and the confidence of its

colonos and the community in general, which it had hitherto enjoyed, was destroyed and the business for which defendant was organized practically ruined.

63

VI.

Defendant further denies that complainant was at the time of the beginning of this suit, or is now, entitled to the immediate possession of said premises, factory, machinery and lease or that he was at said time, or now is, the sole and exclusive owner of the same, as alleged in paragraph IX and X of his bill.

VII.

Defendant admits the allegations contained in paragraph XII and XIII of said bill of complaint and admits the allegations of paragraph XIV and XV except as to the further allegation that it was insolvent at the time of the filing of said bill, which allegation it most positively denies.

Wherefore, this defendant having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this honorable Court to enter its judgment, that this defendant be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity.

CENTRAL ALTAGRACIA, INCORPORATED,
F. L. CORNELL, *President.*

F. L. Cornwell, being first duly sworn, says: that he is President as well as counsel for the above named defendant, that he has read the foregoing answer and knows its contents and that the matters therein set forth are true.

F. L. CORNWELL.

Sworn to and subscribed before me, this 24th day of July, 1909.

JOHN L. GAY,
Clerk U. S. Dist. Court.

64

(*Translation of Exhibit "A" to Answer.*)

(Filed July 24th, 1909.)

In the city, County and State of New York, United States of America, on the twenty-eighth day of October, nineteen hundred and seven (1907) before me, Augustine P. Barranco, Notary Public for Kings and New York Counties, and before the witnesses Edwin G. Lewis and Hugo Kolman, qualified by law and known to me, the following persons appeared, who are also known to me and who understand the Spanish language:

1. Frederick L. Cornwell, of lawful age, bachelor, Attorney at Law, resident of Mayaguez, Porto Rico, President of and representing the Central Altamaria, Incorporated, a corporation duly organized and existing under the laws of the State of Maine, United States of America, as set forth in the certificate of incorporation which I have had before me and was filed in the respective Department of State on the twenty-third (23) day of August, nineteen hundred and five (1905). He was elected to the office which he is discharging, at a meeting of the Board of Directors of the Company held on the twenty-eighth day of December, nineteen hundred and six (1906) as set forth in the respective minutes of the proceedings which I have had before me. The authority under which he acts appears from the resolution adopted at a general meeting of stockholders of the Company held on the twenty-fourth (24th) day of October, nineteen hundred and seven (1907), the record of the proceedings of which said meeting I certify to have seen. The said resolution, the Spanish translation of which I certify to be correct, reads literally as follows:

"Whereas, at a meeting held by the Board of Directors of this Company, on the twenty-third (23rd) day of October, nineteen hundred and seven, the following resolutions were adopted:

65 "Whereas, it is convenient to the interests of this Company to dispose of its rights and properties in and to the Mill Central Altamaria, for the purpose of paying such amounts as have been advanced to it by Ramon Valdes y Cobian:

"Therefore, be it resolved, that this Company do sell, transfer and assign to Ramon Valdes y Cobian, for the amount of Sixty-Five Thousand Dollars (\$65,000.00) which it owes him, the contract of lease and other rights which the Company acquired from Salvador and Gerardo Castelló Camps, which are the same as were acquired by the latter from Joaquin Sanchez de Larragoiti; and also such rights as belong to this Company in and to the machinery and appurtenances on the premises of the said Central Altamaria at the time of the transfer of the said contracts of lease to the Company; as well as such rights as belong to this company in and to the machinery and appurtenances introduced by it thereafter on the said premises.

"Be it further resolved, that the President of this Company be, and he is hereby authorized, empowered and directed to execute and sign, in the name and on behalf of the Company, all such public documents or instruments as may be necessary, convenient or desirable, for the purpose of carrying the preceding resolution into effect.

"Therefore, it is resolved to affirm and ratify the preceding resolutions and the purchase which the Company has made from Ramon Valdes y Cobian of the contract of lease and all other rights therein described, and to consider the said resolutions as the acts and resolutions of the stockholders of this Company."

2. Don Ramón Valdes y Cobian, of lawful age, married, capitalist and a resident of this City, appears herein in his own behalf.

The President of the Central Altamaria Incorporated, hereinafter

called The Company, and Don Ramon Valdes y Cobian, hereinafter called Valdes y Cobian, stated:

(1) That on the eighteen- (18th) day of January, nineteen hundred and five (1905), Don Joaquin Sanchez de Larragoiti, celebrated in Paris, France, a contract of lease with Don Salvador Castelló, extending the same on the sixth (6th) day of June, of the same year, which said documents were reduced to public instruments, by means of the notarial record which literally reads as follows:

66 "Number three hundred and fifty-four (354). In the City of Mayaguez, on the thirtieth (30th) day of June, nineteen hundred and five (1905), before Mariano Riera Palmer, lawyer and Notary Public of Porto Rico, residing in this City, and before the witnesses hereinafter named, appears Don Salvador Castelló y Camps, of lawful age, bachelor, property owner, resident of this City—

"I certify to his identity, profession and residence; he assures me that he is in the full enjoyment of his civil rights and having, in my judgment, the legal capacity necessary for this act, states:

First: That under date of January the eighteenth (18th) ultimo and while in the city of Paris (France), he executed, together with Don Joaquin Sanchez de Larragoiti, resident of the said city of Paris, a private document which he exhibits to me in this act, and which being literally copied reads as follows:

"'Paris, January 18, 1908. Between the undersigned, Don Joaquin Sanchez de Larragoiti, resident of Paris, and Don Salvador Castelló resident of Mayaguez, Porto Rico, and visiting in this city of Paris, the following has been agreed to:

"'1st. Don Joaquin Sanchez de Larragoiti, owner of the Central Altamaria and twenty-two (22) cuerdas of land annexed thereto, situated in Mayaguez, Porto Rico, consents to grant to Don Salvador Castelló the said Central and the twenty-two (22) cuerdas of land for the exploitation thereof, for a term of (10) years.

"'2nd. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló under no circumstance and in no respect alienate, mortgage or encumber the Central and the twenty-two (22) cuerdas annexed thereto, with any obligation or lien that shall affect the said property.

"'3rd. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castelló, are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient; which said machinery, at the end of the years mentioned in Article 1st hereof, shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

"'4th. In consequence of the Articles aforementioned, the said Don Salvador Castelló shall have the right to grind, and benefit by, the largest possible quantity of sugar cane, in the said Central Altamaria.

"'5th. The buildings shall be covered by Fire Insurance and in

case of an unfortunate accident the amount of insurance shall be applied to the reconstruction of such as may be destroyed.

“6th. The expense of fire insurance on the Central, as well as taxes on the property, shall be deemed to be operating expenses and shall be deducted each year from the net profits that may be derived from the said exploitation; but in no case shall the said Don Salvador Castelló claim any liability or part thereof, from the owner Don Joaquin Sanchez de Larragoiti.

“7th. As already stated in Article 3rd. Don Salvador Castelló may add any machinery or apparatus to those now existing in the said Central Altagracia. In cases of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment of any part of the expenses that may originate from said repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing, be deemed to be expenses, and therefore no claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de Larragoiti out of the exploitation of the said property.

“8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central shall remain for the benefit of Don Joaquin Sanchez de Larragoiti; and Don Salvador Castello shall have no right to claim anything for the improvements made.

“9th. After each crop such profits as may be produced by the Central Altagracia shall be distributed and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent (75%) shall belong to Don Salvador Castelló; who may interest therein whomsoever he may wish either for the whole or part thereof.

“10th. In case of death of Don Joaquin Sanchez de Larragoiti, this contract shall be respected by his heirs. In case of death of Don Salvador Castelló his brother, Gerardo Castelló, shall take his place and be a contracting party, if he so desires. Otherwise the plantation, in such a condition as it may be in at his death, shall immediately pass into possession of its owner Don Joaquin Sanchez de Larragoiti.

“11th. Don Joaquin Sanchez de Larragoiti shall authorize his present manager and attorney in fact, in Mayaguez, Porto Rico, Don Joaquin Fornabello, for the purpose of giving possession of the property “Altagracia” and of the lands thereof to Don Salvador Castelló.

“12th. It is the will of the contracting parties that this private contract shall have the same force as if it were a public instrument, to which it may be reduced by any one of the said parties, and the expenses thereof shall be for account of the party who so reduces it.

68. "This contract was read and approved by the contracting parties, who sign the same in duplicate, in Paris, on the eighteenth (18th) day of January, nineteen hundred and five, (1905).

"It is further agreed as an additional condition that Don Joaquin Sanchez de Larragoiti agrees with Don Salvador Castelló on the term of one (1) year from and after this day to begin work on the Central "Altagracia." Upon the expiration of this term, if the necessary improvements shall not have been begun by him, then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof. S. Castelló, J. Sanchez.

"The document herein above inserted is a true copy from the original thereof, to which I certify and refer, and which I return to the party producing same, signed and sealed by me."

"Second: That under date of the sixth (6th) instant they extended the contract hereinbefore inserted, by the condition which being literally copied reads as follows:

"Having celebrated a contract with Don Salvador Castelló, in this city, on the eighteenth (18th) day of January of the current year, for the exploitation, for a term of ten (10) years, of my property named "Altagracia," situated in Mayaguez, Porto Rico, I make known by this document which I desire to have the same force as if it were public, that the said term of ten (10) years is hereby extended to twenty (20) years; it being well understood that this extension does not modify nor alter the other clauses of the contract. Paris, June sixth (6th), nineteen hundred and five (1905). J. Sanchez."

"It is a true copy from the original thereof, to which I certify and refer, and which I return, signed and sealed by me."

"Third: And the party hereto, Señor Castelló, availing himself of the right in him vested under Paragraph 12 of the document hereinabove inserted, by this act he reduces the said private contract to a public instrument for the purpose of having the same duly recorded in the proper Registry of Property, to which end a copy hereof shall be filed in said office.

"He so covenants and signs with the witnesses Don Federico Philippi and Don Avelino Irizani, residents of this city, upon my reading this instrument to them at the same time and informing them of their right to do so for themselves, to all of which I certify. S. Castelló.—F. Philippi.—Avelino Irizani.—Signed Ledo, Mariano Riera Palmer.

"2. That Don Salvador and Don Gerardo Castelló, by instrument executed in Mayaguez, on the first (1st) day of July, nineteen hundred and five (1905), before Mariano Riera Palmer, Lawyer and Notary Public, assigned to the Central Altagracia Company, their rights and actions under the contracts hereinbefore inserted, as set forth in the public instrument immediately transcribed as follows:

69. Paris, January 18, 1908.—Between the undersigned Don Joaquin Sanchez de Larragoiti, resident of Paris, and Don

Salvador Castelló, resident of Mayaguez, Porto Rico, and visiting in this city of Paris, the following has been agreed to: 1st, Don Joaquin Sanchez de Larragoiti, owner of the Central Altagracia and twenty-two (22) cuerdas of land annexed thereto, situated in Mayaguez, Porto Rico, consents to grant to Don Salvador Castelló the said Central and the twenty-two (22) of land for the exploitation thereof for a term of ten (10) years.

2nd. Under no circumstances and in no respect shall the said Don Salvador Castelló contract any obligation whereby the said Don Joaquin Sanchez de Larragoiti shall have the least personal responsibility, nor shall the said Don Salvador Castelló, under no circumstances and in no respect alienate, mortgage or encumber the Central and the twenty-two (22) cuerdas of land annexed thereto, with any obligation or lien that shall affect the said property.

3rd. In brief, the right and powers that Don Joaquin Sanchez de Larragoiti grants unto Don Salvador Castelló are to operate and work the said property for his account, and introduce therein such machinery as he may deem convenient, which said machinery, at the end of the years mentioned in Article 1st, hereof, shall become the exclusive property of Don Joaquin Sanchez de Larragoiti.

4th. In consequence of the above mentioned articles the said Don Salvador Castelló shall have the right to grind, and benefit by, the largest possible quantity of sugar cane in the said Central "Altagracia."

5th. The building shall be covered by Fire Insurance and in case of an unfortunate accident, the amount of insurance shall be applied to the reconstruction of such as may be destroyed.

6th. The cost of Fire Insurance on the Central, as well as taxes on the property, shall be deemed to be operating expenses and shall be deducted each year from the net profits that may be derived from the said exploitation; but in no case shall the said Don Salvador Castelló claim any liability or part thereof from the owner Don Joaquin Sanchez de Larragoiti.

7th. As already stated in Article 3rd, Don Salvador Castelló may add any new machinery or apparatus to those now existing in the said Central Altagracia. In case of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment for any part of the expenses that may originate from such repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing be deemed to be expenses; and, therefore, no direct claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de Larragoiti out of the exploitation of the said property.

8th. Upon the expiration of the term agreed on
70 under this contract, any improvement or machinery installed
in the said Central shall remain for the benefit of Don

Joaquin Sanchez de Larragoiti; and Don Salvador Castelló shall have no right to claim anything for the improvements made.

9th. After each crop, such profits as may be produced by the Central "Altagracia" shall be distributed, and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent (75%) shall belong to Don Salvador Castelló, who may interest therein whomsoever he may wish either for the whole or part thereof.

10th: In case of death of Don Joaquin Sanchez de Larragoiti this contract shall be respected by his heirs. In case of death of Don Salvador Castelló, his brother, Gerardo Castelló, shall take his place and be a contracting party, if he so desires. Otherwise, the plantation, whatever its condition may be at the time of his death, shall immediately pass into the possession of its owner Don Joaquin Sanchez de Larragoiti.

11th. Don Joaquin Sanchez de Larragoiti shall authorize his present manager and attorney in fact in Mayaguez, Porto Rico, Don Joaquin Torriabelló, for the purpose of giving possession of the property "Altagracia" and of the lands thereof to Don Salvador Castelló.

12th. It is the will of the contracting parties that this private contract shall have the same force as if it were a public instrument, to which it may be reduced by any one of the said parties, and the expenses thereof shall be for account who so reduces it.

This contract was read and approved by the contracting parties who sign the same in duplicate, in Paris, on the eighteenth day of January, nineteen hundred and five (1905).

It is further agreed as an additional condition that Don Joaquin Sanchez de Larragoiti agrees with Don Salvador Castelló on the term of one (1) year from and after this day to begin work on the Central "Altagracia." Upon the expiration of this term, if the necessary improvements shall not have been begun by him, then this contract shall be null and void, and no cause of action shall accrue to any of the contracting parties by reason thereof. S. Castelló. J. Sanchez.

The document hereinabove inserted is a true copy of the original thereof, to which I refer and certify.

"Second: That under date of the sixth (6th) ultimo they extended the contract hereinbefore inserted, by the condition which being literally copied reads as follows:

"Having celebrated a contract with Don Salvador Castelló, in this City, on the eighteenth (18th) day of January of the current year for the exploitation, for a term of ten (10) years, of my property named "Altagracia," I make known by this document,

71 which I desire to have the same force as if it were public, that the said term of ten (10) years is hereby extended to twenty (20) years, it being well understood that this extension does not modify or alter the other clauses of the contract. Paris, June sixth (6th), nineteen hundred and five (1905).

"It is a true copy from the original thereof, to which I refer and certify."

"Third: The private document hereinbefore inserted has been reduced to a public instrument in accordance with the provisions thereof, under the instrument executed before me under date of yesterday, by Don Salvador Castelló, the original of which I have before me for this act."

"Fourth: In virtue whereof, the contracting parties have agreed among themselves on the assignment of all rights and actions in and to the Central 'Altagracia,' and therefore, Messrs. Salvador Castelló and Gerardo Castelló by these presents do assign, waive and transfer to Don Frederick L. Cornwell for the corporation to be organized under the name of "Central Altagracia," of which he is the trustee, the rights which they have of exploiting the said Central 'Altagracia' under the conditions established in the contract hereinbefore inserted, and, further, under the following conditions:

"First: The corporation to be organized under the name of 'Central Altagracia' will donate to Don Salvador Castelló eight thousand dollars (\$8,000.00) in paid-up shares of the stock to be issued by it, for and in consideration of which the Company shall have the right to install and operate steam machinery with a grinding capacity of two hundred (200) tons of sugar cane per day of twenty-four (24) hours.

"Second: When the company shall have increased the number of tons to be ground during twenty-four (24) hours to three hundred (300) tons, then Señor Castelló will receive four thousand dollars (\$4,000.00) more in paid-up shares; and in the same manner the same Señor Castelló will continue to receive Two Thousand Dollars (\$2,000.00) in paid-up shares as the Company goes on increasing the number of quintals of cane, it being understood that the said amount of Two Thousand Dollars (\$2,000.00) is for each increase of one hundred (100) tons.

"Third: In consideration of this contract the Company binds itself to use the services of Don Salvador Castelló, and in case of his incapacity or personal disability or in his absence, then the Company shall make use of the services of the other assignor Don Gerardo Castelló, as Superintendent and at an annual salary of Fifteen Hundred Dollars (\$1500.00), beginning from and after

the first (1st) day of October next.

72 "Fourth. The said Señor Castelló from the moment that he takes charge of the aforesaid services as superintendent, shall render the same uninterruptedly and shall devote all his time to the services of the assignee Company and shall only be responsible to the Board of Directors of the corporation.

"Fifth: In case of absence of Don Salvador Castelló his brother, Don Gerardo, shall continue to perform the same services; and in case that he should have to relinquish his position for good and sufficient reasons, the Company binds itself to pay him his salary during the life of this contract, as if he were an employee of the corporation; and in case of the death of the said Don Salvador,

his brother, Don Gerardo, will substitute him, pursuant to the provisions of the private contract hereinbefore inserted.

Fifth: This assignment of rights is made by Don Salvador Castelló under the same conditions as are stipulated in the aforesaid contract above inserted, and the said Don Gerardo assigns such rights as he may have as the substitute of his brother Don Salvador, under the aforesaid contract, and shall be subject in the same way to the contract entered into with Don Joaquin Sanchez de Larra-gotí, as well as to the present contract.

Sixth: Don Frederick L. Cornwell, in representation of the Company to be organized under the name of "Central Altamaria," accepts this contract in all its parts, as it is in accordance with the agreement, binding himself together with the other parties hereto, to a faithful compliance with the conditions stipulated in this document.

In testimony whereof, they so state, covenant and sign with the witnesses Don José Ramirez and Don Robustino Biaggi, residents of this city, after I read to them this instrument, at the same time informing them of their respective right to do so, each one for himself, to all of which I certify.—C. Castello, F. L. Cornwell, Jose Ramirez, Robustino Biaggi. Signed Ledo, Mariano Riera Palmer.

3. That by public instrument executed in the City of San Juan, Porto Rico, on the eleventh (11th) day of April, nineteen hundred and seven (1907), before Francisco de la Torre y Garrido, Lawyer and Notary, the Central Altamaria Company executed in favor of Don Ramon Valdes y Cobian the contract of conditional sale contained in said instrument, which is as follows:

"Number Eighty.

"In the City of San Juan, Porto Rico, on the eleventh (11th) day of April, nineteen hundred and seven (1907), before me, Francisco de la Torre Garrido, Lawyer and Notary of this Island, with residence and vicinity at the Capital thereof,

Appear:

73 Mr. Noah B. K. Pettingill, party of the first part, who states that he is forty-four (44) years of age, married, lawyer and a resident of this city, and

Don Ramon Valdes y Cobian, party of the second part, who says that he is fifty-two (52) years of age, married to Doña Encarnación Cobian, property owner, and also of this vicinity.

The said Señor Valdés Cobian appears herein in his own right, and the said Mr. Pettingill in the name and on behalf of the corporation domiciled in the District of Mayaguez and named "Central Altamaria," of which he is the Secretary and Treasurer, having been authorized to execute these presents by the Board of Directors of the same, as shown by the resolutions adopted by said Board, which are attached hereto and made an integral part hereof. Therefore, they have, in my opinion, the legal capacity necessary to execute this instrument of conditional sale.

They state the following facts:

1st. That the Central Altagracia, in the sugar factory established in the District of Mayaguez, near Añasco, has installed and is the owner of the apparatus and machinery hereinafter specified, to wit: a grinding mill, number twenty-three (23), of six (6) rollers, four (4) feet in length each, manufactured by Fulton Ironworks; two (2) crushers, two (2) defecating pans, each of a capacity of one thousand (1,000) gallons, and four (4) defecating pans each of a capacity of five hundred (500) gallons; a ten (10) foot vacuum pan, and another one of seven (7) foot, one of them manufactured by Payne & Jourvert, and the other one manufactured in Scotland; a quadruple effect —, manufactured by the Lyllia Manufacturing Company, of a capacity of seventy-five thousand (75,000) gallons; four (4) crystalizers manufactured by Payne & Jourvert, nine (9) centrifugals, four (4) of them manufactured in Scotland and five (5) American; five (5) boilers for generating steam, one (1) of three hundred (300) horse power, two of two hundred (200) horse power each, one of one hundred (100) horse power, and another one of eighty (80) horse power; thirty (30) iron tanks; one steam engine, number two hundred and ninety-five (295), manufactured by Corliss; several pumps and small machines and other apparatus and utensils appertaining to said factory.

2nd. That the said Central is installed in land belonging to Don Joaquin Sanchez Larragoiti, who ceded the same together with the land for a term of twenty (20) years to Don Salvador Castelló, under contract in which among other things, it was agreed as follows, to wit:

7th. As already stated in Article 3rd, Don Salvador Castelló may add any new machinery or apparatus to those now existing in the said Central Altagracia. In case of expenses of this nature for new machinery or repairs, the whole shall be for account of the operators, and neither Don Salvador Castelló nor any other person shall have the right to demand any return or payment for any part of the expenses that may originate from such repairs, nor shall such new machinery as Don Salvador Castelló may consider advisable to add to the machinery now existing be deemed to be expenses, and, therefore, no direct claim or deduction shall be made from such profits as may accrue to Don Joaquin Sanchez de

74 Larragoiti out of the exploitation of the said property.

8th. Upon the expiration of the term agreed on under this contract, any improvement or machinery installed in the said Central shall remain for the benefit of Don Joaquin Sanchez de Larragoiti; and Don Salvador Castelló shall have no right to claim anything for the improvements made.

9th. After each crop such profits as may be produced by the Central Altagracia shall be distributed, and twenty-five per cent (25%) thereof shall be immediately paid to Don Joaquin Sanchez de Larragoiti, as equivalent for the rental of the said Central and of the twenty-two (22) cuerdas of land surrounding the same. The remaining seventy-five per cent (75%) shall belong to Don Sak

vador Castello, who may interest therein whomsoever he may wish, either for the whole or part thereof.

3rd. That by instrument executed in Mayaguez, before Don Mariano Riera Palmer, Lawyer and Notary, with residence and vicinity in the said city, the said Salvador Castelló subrogated in his place, in so far as the contract set forth in the preceding paragraph refers to, the corporation represented by Mr. Pettingill.

4th. That the said corporation being in need of a certain amount of money, it agreed to make a conditional sale of the machinery and apparatus specified in paragraph first (1st) hereof to the other party hereto, the said Valdes y Cobian, and carrying the said agreement into effect under the following clauses, they covenant.

First. Mr. Noah B. Pettingill, in the capacity in which he acts, transfers, on conditional sale, that will mature on the first (1st) day of April of the ensuing year, nineteen hundred and eight (1908), to Don Ramon Valdes y Cobian, who accepts the transfer, all the apparatus and machinery specified in paragraph first (1st) hereof, with all other appurtenances and utensils annexed to the factory and that belonged to the corporation Central Altamaria, there being included in said sale all such other apparatus and machinery as may be mounted by the said corporation while the conditional term shall last and which shall be a part of the said factory for the manufacture of sugar.

Second. The aforesaid sale is made for the amount of Thirty-Five Thousand Dollars (\$35,000.00), of which the representative of the vendor corporation acknowledges to have received Twenty-Five Thousand Four Hundred Dollars (\$25,400.00) prior to this act and to this entire satisfaction, and the balance of Nine Thousand six hundred Dollars (\$9,600) shall be turned over to the vendor corporation by Señor Valdes, immediately upon being requested to do so by the former.

Third. The aforesaid sale shall be consummated in favor of the purchaser Señor Valdes upon the expiration of the first (1st) day of April, nineteen hundred and eight (1908).

75 Fourth. The machinery and apparatus transferred under this instrument to Señor Valdes y Cobian are leased by the latter to the corporation Central Altamaria for the price or rental of Three Thousand Six Hundred Dollars (\$3,600.00) per annum, payable at maturity.

Fifth. Should this sale be consummated, the vendor corporation subrogates the vendee, Señor Valdes in its place and stead in everything concerning the contract with Don Joaquin Sanchez de Larragoiti, in paragraph 2nd of the statement of facts hereinabove referred to, assigning all its rights and actions, under the said contract, to the said Señor Valdes, who shall, in turn, be bound to comply with the obligations of the assigning corporation.

Such is the instrument which the contracting parties execute and covenant and by which they bind themselves to stand and abide at all times, under the liabilities of law, and designate this city for all acts and proceedings arising thereunder.

Don Julian de Bengoechea and Don Jesus Noriega are witnesses,

without legal disqualifications, known to me, to act as such, and residents of this city.

This instrument was read by the contracting parties and witnesses and was approved by the former and signed by all.

And as to the identity of the contracting parties, their age, whether married or single, profession and residence, and to everything else herein contained, I, the Notary, certify. (Signed) N. B. K. Pettingill.—R. Valdes.—J. de Bengoechea.—F. de la Torre. There are the proper internal revenue stamps cancelled by the seal of the Notary."

(4) That the Central Altagracia Company received from Don Ramon Valdés y Cobian the said amount of Thirty-Five Thousand Dollars (\$35,000.00) referred to in clause second of the preceding instrument, copied under No. 3, which said amount was invested by it in the purchase of machinery which it has already installed on its property in Porto Rico and in improvements to the same; which gives to this credit the character of "refaccionario."

(5) That, because of its being convenient to their interests, both parties have entered into the contract contained in the following clauses:

First. The President of the Central Altagracia Incorporated, in the name and in representation of the same, sells, assigns and transfers to Ramon Valdes y Cobian, and this latter accepts, the contract of lease and all other rights, which the Company acquired from Salvador and Gerardo Castelló Camps, under instrument copied under No. 2, which said rights are such as were acquired by the latter named parties from Don Joaquin Sanchez de Larragoiti under the contracts set out in the instrument hereinbefore inserted under No. 1; and he further sells, assigns and transfers to the said Valdes y Cobian each and every right appertaining to the Company in and to the machinery, utensils and appurtenances that existed on

76 the properties of the Central Altagracia at the time that the contract of lease was assigned to the Company, as well as such rights as the Company has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties.

Second. The consideration for the sale, assignment and transfer of the said contract and rights is the amount of Sixty-Five Thousand Dollars (\$65,000.00), American gold, which the Company has received already from Valdés y Cobian in this way. Thirty-Five Thousand Dollars (\$35,000.00) which the Company was owing him under the public instrument dated April the eleventh, nineteen hundred and seven (1907), executed before the Notary, Francisco de la Torre y Garrido, hereinbefore inserted under No. 3, and the balance of Thirty Thousand Dollars (\$30,000.00) which the Company has received afterwards in cash from Valdés y Cobian.

Third. Inasmuch as the sale, assignment and transfer of the contract or lease, machinery, utensils and appurtenances which the Company makes this day to Valdes y Cobian, dispose of the contract copied under No. 3 and set forth in the instrument dated April eleventh (11th), nineteen hundred and seven (1907), executed in the City of San Juan, Porto Rico, before Francisco de la Torre

Garrido, Notary Public, both parties declare the said contract and instrument cancelled and substituted by the contract contained in this instrument.

Fourth. All expenses for this and any other instruments in connection with this contract and executed by the two parties hereto shall be for account of the Company.

Fifth. Both parties accept the rights and undertake the obligations arising under this contract.

I certify that I have informed the contracting parties that this instrument should be filed in the proper Registry of Property in Porto Rico, to be recorded therein and be effective as against third parties.

In the presence of the witnesses I read the aforesaid to the contracting parties, to whom I explained the legal force and effect of this instrument, and fully aware of the contents hereof they ratified the same without modifying it, and accepted the same and sign with the witnesses, to all of which I certify.

(Signed)

FREDERIC C. CORNWELL.

President Central Altamira, Inc.

(Signed)

RAMON VALDÉS.

Witnesses:

EDWIN S. LEWIS. (Signed.)

HUGO KOHLMAN.

Before me,

(Signed)

A. P. BARRANCO.

Notary Public.

I, Peter J. Dooling, Clerk of the County of New York, do hereby certify that A. P. Barranco is a Notary Public.

(There is a seal.)

77 Filed at 10 A. M. this day, as per entry No. 939, Folio 229, Volume 1st of the Day Book.

(Signed) The Registrar, JOSÉ E. BENEDICTO.

Mayaguez, January 3, 1908.

(There is a seal of the Registry).

The registration of the preceding document is not admitted because of the defect of not describing the property therein referred to, and because the right of lease thereby assigned does not appear recorded in favor of the assignor, according to the indexes, and for the same reasons a cautionary entry for 120 days cannot be made, either.

Mayaguez, February 19, 1908.

(There are two internal revenue stamps of fifty cents each, cancelled.)

(Signed)

The Registrar, JOSÉ E. BENEDICTO.

(Cancelled two internal revenue stamps of fifty cents each as per
No. 1 of the Tariff and Internal Revenue Law.)

(Signed)

BENEDICTO.

(There is a seal of the Registry.)

The party filing notified this 17th day of March, 1908.

(Signed) J. VAZQUEZ. (Signed) BENEDICTO.

A true and correct translation:

*— — — — —
Interpreter & Translator.*

EXHIBIT B.

In the City, County and State of New York, United States of America, on the second (2nd) day of November, nineteen hundred and seven (1907), before me, Joseph A. Caras, Notary Public in and for the Counties of Kings and New York, and before the witnesses Augustin P. Barranco and Frederick K. Sewall, residents and qualified by law,

Appeared the following named persons who are also known to me and who understand the Spanish language:

(1) Don Ramon Valdes y Cobian, acting in his own behalf, of lawful age, married, capitalist, resident of this city;

(2) Frederick L. Cornwell, of lawful age, bachelor, attorney at law, resident of Mayaguez, Porto Rico, President of and representing the Central Altgracia, Incorporated, which is a corporation duly organized and existing under the laws of the State of Maine, United States of America, as set forth in the certificate of incorporation which I have had before me and was filed in the respective Department of State on the twenty-third (23rd) day of August, nineteen hundred and five (1905). He was elected to the office which he is discharging at a meeting of the Board of Directors of the Company, held on the twenty-eighth (28th) day of December, nineteen hundred and six (1906) as set forth in the respective minutes of the proceedings which I have had before me. The authority under which he acts appears from the resolution adopted at a general meeting of the stockholders of the Company, held on the thirtieth (30th) day of October, nineteen hundred and seven (1907), the record of the proceedings of which said meeting I certify to have seen. The said resolution, the translation of which into Spanish I certify to be correct, reads literally as follows:

"Whereas the Board of Directors of this Company, at a meeting held on the twenty-eighth (28th) day of October, nineteen hundred and seven (1907), adopted the following resolutions:

"Whereas it is convenient to the interests of this Company to acquire the rights and properties belonging to Ramon Valdes y Cobian in and to the Central Altgracia, situated near the City of Mayaguez, in the municipality of the same name, in the Island of Porto Rico;

79 "Therefore, be it resolved that this Company purchase from Ramón Valdes y Cobian for the amount of sixty-five thousand dollars (\$65,000.00), American gold, the contract of lease and all other rights unto him belonging in and to the Central Altamaria. The said amount shall be paid in installments with interest thereon at the rate of ten per cent (10%) per annum, and the transfer of title thereto shall not be made until the full amount of Sixty-Five Thousand Dollars (\$65,000.00) and interest thereon shall have been paid.

"And Be It Further Resolved that the President of this Company be, and he is hereby authorized, empowered and directed to execute and sign, in the name and on behalf of the Company, all such public documents as may be necessary or desirable for the purpose of carrying the preceding resolution into effect.

"Therefore Be It Resolved to ratify and approve the preceding resolutions and the purchase which the Company has made from Ramón Valdes y Cobian of the contract of lease and of all other rights therein described and to consider the said resolutions as the acts and resolutions of the stockholders of this Company."

Don Ramón Valdes y Cobian, hereinafter called Valdes y Cobian, and the President of the Central Altamaria Incorporated, herein-after called the Company, have entered into the contract contained in the following clauses.

First: Ramón Valdes y Cobian conditionally sells, assigns and transfers to the Central Altamaria Incorporated, and the latter accepts the contract of lease and all other rights which he has in and to the Central Altamaria, situated near the city of Mayaguez, in the Municipality of the same name, Island of Porto Rico, and which he acquired from the said Company under instrument executed in this City yesterday, before the undersigned Notary Public. The said contract of lease and all other rights are the same as the Company acquired from Salvador and Gerardo Castelló Camps, and by these latter from Joaquin Sanchez de Larragoiti; and, further, such other rights as belonged to the Company, for any reason, in and to the machinery, utensils and appurtenances existing on the properties of the Central Altamaria, and which were sold by the said Company to Valdes y Cobian under the instrument aforesaid.

Second: The consideration for the conditional sale, assignment and transfer of the said contract and rights is the amount of Sixty-Five Thousand Dollars (\$65,000.00), American gold, which

80 the Company shall pay punctually to Valdes y Cobian, in San Juan, Porto Rico, or in this City, with interest thereon at the rate of ten per cent. (10%) per annum, which is the current rate in Porto Rico, to be computed every six (6) months, on installments as follows: One-fourth part on the first (1st) day of April, nineteen hundred and eight (1908); one-fourth part, on the first (1st) day of April, nineteen hundred and nine (1909); one-fourth part, on the first (1st) day of April, nineteen hundred and ten (1910), and the remaining balance on the first (1st) day of April, nineteen hundred and eleven (1911).

If, for any reason, the Company shall be unable to pay any in-

stalment on the dates fixed, Valdes y Cobian, binds himself to extend the same for a term of one (1) year, provided the interest on the total amount shall have been paid. Such deferred installment, together with the next maturing on the same day, shall be paid at the same time; and, failing to do so, the whole amount shall, on that fact alone, become due and shall be immediately paid.

The Company shall pay interest, including such as may accrue on any deferred installment, to Valdes y Cobian, with strict punctuality, every six (6) months at either one of the two places hereinabove stated:

Third: Should the Company fail to pay interest to Valdes y Cobian with strict punctuality, or at most within thirty (30) days from and after the maturity of each semi-annual payment; or should it fail to pay any one of the four parts of the price in the manner hereinabove stated, or should it fail to comply with any of the obligations assumed by it under this contract, then, by that mere fact, all other installments shall be held to have become due, and Valdes y Cobian may enter immediately into possession of the properties and rights conditionally sold under this instrument.

The Company reserves to itself the right to make advance payments, at any time, to Valdes y Cobian, on account of the 81 money due him by reason of the price of this contract, and in such event the Company shall only pay such interest as shall have accrued on the amounts paid, upon to the date of the respective payments.

Fourth: It is expressly stipulated and agreed that the "dominio" and ownership of the contract of lease and of all other rights which are the object of this contract, will belong exclusively to Valdes y Cobian while the Company shall not have paid in full the price of the said contract of lease and of all other rights hereinabove mentioned, including the rights to the machinery, utensils and appurtenances of the Central Altgracia. Wherefore the said Valdes y Cobian, on the mere fact of not having been paid on the terms agreed to, either the interest or any of the four (4) installments of the price, may take immediate possession of the contract of lease, rights, machinery, utensils and appurtenances of the Central Altgracia, as the owner thereof, and for which he is especially authorized by the Company from this moment.

Fifth: The Company undertakes the following additional obligations:

a. It will pay for its own account all impost- and taxes, whether ordinary or special, and whether of a fiscal, municipal or of any other nature, affecting or connected with the properties and rights that are the object of this contract.

b. While the amount and interest referred to in this contract shall not have been paid in full, it shall keep covered by fire insurance and against all other risks insurable in Porto Rico, all the properties and rights that are the object of this agreement; binding itself to keep the said insurance policies in force, and to do nothing, or permit anything to be done that shall affect the said properties and rights to the prejudice of the said Valdes y Cobian, or that may

invalidate or diminish the value of the said insurance policies.

82 In case of losses covered by said policies, or by any of them, Valdés y Cobián has the right to receive directly and immediately all the proceeds of policy or policies, which he shall invest in making repairs of the damages caused, in the purchase of machinery, utensils and appurtenances to replace such as may have been destroyed, and reinsuring the properties and rights hereinabove mentioned.

e. It shall be subject in everything to the laws of Porto Rico and of the State of Maine, United States of America; and shall, furthermore, comply with and cause to be complied with all rules and regulations in force in matters of sanitation, fire, roads or of any other nature that may affect the properties and rights herein referred to; and it undertakes forthwith all liabilities resulting from violations of or for non-compliance with said laws, rules and regulations; the Company thus guaranteeing that Valdes y Cobian will be fully exempted from such liabilities.

d. It shall not place, or allow to be placed, to the prejudice of Valdes y Cobian any lien, encumbrance or easement of any kind, on the properties and rights conditionally sold.

e. It shall manage the properties and business of the Central Altamira in the regular manner for this kind of enterprises, and shall keep in a perfect condition of repair and maintenance the buildings, dependencies, machinery, utensils and appurtenances of all kinds, making, at its own expense, on petition of Valdes y Cobian or without it, all the necessary repairs and such substitutions of machinery, utensils and appurtenances as may be indispensable to make, in accordance with the practice of the best engineers.

Sixth: Should the Company fail to undergo the expenses which it is bound to undergo under this contract, of whatsoever nature the same may be, including payment for taxes, imposts and liens,

83 Valdes y Cobian may do so, in which case, any sums so expended by him, and interest thereon at the rate of ten per cent (10%) per annum, shall be paid to him by the Company, together with the amount that should be paid by the latter for the next installment of the price.

Seventh: Valdés y Cobian is hereby fully authorized by the Company to examine, whether personally or through his agents and representatives, at any time and as often as he may deem it advisable, all the properties, books and papers of the Company to convince himself as to whether or not the said properties, machinery, utensils and appurtenances are kept in complete condition of repairs, and whether or not they are being duly managed and operated; and also to convince himself as to whether or not each and every obligation that the Company has assumed under this contract are being complied with.

Eighth: All the expenses occasioned under this or any other instrument that may be executed by the two parties hereto in connection with this contract shall be for account of the Company.

Ninth: Both parties accept the rights and undertake the obligations arising under this contract.

I certify that I have informed the parties that they should file this instrument in the proper Registry of Property in Porto Rico to be recorded therein, to the end that it may produce its effects against third parties.

In the presence of the witnesses I read the foregoing to the contracting parties, to whom I explained the force and legal effect of this instrument, and fully cognizant of the contents hereof, they ratified the same without modification, accepted it and sign with the witnesses, to all of which I certify.

(Signed)

R. VALDES,

F. L. CORNWELL,

President Central Altgracia, Inc.

Witnesses:

A. P. BARRANCO,
FREDERICK K. STEWARD.

84 Before me.
(Signed)

JOSEPH A. CARAS,
Notary Public.

There is a certificate issued by Peter J. Dooling showing that Joseph A. Caras is a notary public.

A true and correct translation.

Interpreter and Translator.

(Filed July 26th, 1909.)

In Equity. No. 565.

THE CENTRAL "ALTAGRACIA," INCORPORATED, Complainants,
vs.

RAMON VALDES and NEVERS & CALLAGHAN, Defendants.

In Equity. No. 564.

RAMON VALDES, Complainant,

vs.

THE CENTRAL ALTAGRACIA, INCORPORATED, Defendant.

Motion of Nevers & Callaghan to be Made Parties Defendant in the Suit of Ramon Valdez vs. Central Altgracia, Incorporated, Equity No. 564, and to be Permitted to File Their Answer to such Complaint or Cross-hill as May be Presented by the said Valdez.

To the Honorable Judge of the District Court of the United States for Porto Rico:

Never & Callaghan, a co-partnership composed of George W. Never and James G. Callaghan, citizens of the United States and

residing in the City of New York, represent that, as shown by the records of this court, they have acquired a judgment against
 85 the Central Altamaria, Incorporated, for the sum of Fifteen Thousand Eight Hundred Seventy-eight and 87/100 (\$15,878.87) Dollars; that an execution was issued upon the said judgment and was levied upon all the machinery within the factory building of the said Central Altamaria; that by reason of such circumstances they have acquired a vested right of interest in such property. They aver, however, that in the Bill of Complaint which the said Ramon Valdes has filed in the above entitled cause of Ramon Valdes vs. Central Altamaria, Incorporated, and in an Answer and Cross-Bill which he has filed in the above entitled cause of Central Altamaria, Incorporated, versus Ramon Valdez and Nevers & Callaghan, he is making a claim to be the owner of the machinery of the said Central Altamaria, incorporated, upon which the levy of the said execution in favor of your petitioners has been made.

Your petitioners therefore pray that they may appear as defendants to the said complaint or cross-bill of the said Ramon Valdes and that they may file the accompanying answer and cross-bill in opposition to the claims of the said Valdes.

San Juan, July 26, 1909.

F. H. DEXTER,
Attorney for Nevers & Callaghan.

(Filed July 26th, 1909.)

CENTRAL ALTAGRACIA, Incorporated,
 vs.
 RAMON VALDES and NEVERS & CALLAGHAN.

Answer and Cross-bill of Defendants Nevers & Callaghan.

These Defendants, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the Bill of Complaint herein filed,—
 86 for answer thereto, or to so much thereof as these Defendants are advised it is material or necessary for them to make answer to, answering say:

That on the 16th day of May, 1908, these Defendants obtained in this Court a judgment in their favor, and against the Complainant herein, the Central Altamaria, Incorporated, for the sum of \$15,878.87, together with interest and costs.

That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altamaria, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said execution, together with a copy of the notice

of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

No writ of Error has been prosecuted by the said Central Altagracia, Incorporated, from the said judgment, and the same is now in full force and effect.

That thereafter, and on the 3rd day of June, 1908, this Court made an order directing the Marshal of this Court to refrain from selling any of the property levied upon under the said execution until the further order of this Court, but in and by the said order it was expressly provided that the same should in no manner affect the lien or rights, if any, acquired in the property levied upon by reason thereof.

These defendants say that no part of the said judgment, interest or costs, has been paid.

Defendants further allege that by the said judgment and levy of the said execution they acquired a valid and vested right in and to the property of the Central Altagracia, Incorporated, so levied upon; and Defendants further state that there is no other claim, charge or lien, upon the said property which has preference to the said claim and levy of these Defendants, with the exception

87 of the claim and interest of the Sucesion of Don Joaquin Sanchez de Larragoiti in and to the said property comprising the plant and mill of the Central Altagracia, Incorporated.

These Defendants insist that this Court has no power to delay them in the enforcement and collection of their debt solely because of the appointment of a Receiver to take charge of the said Property; and they further allege that the rights which they have secured by reason of the levy of the said execution are being imperiled by delay, and that the machinery levied upon is rapidly deteriorating in value.

Defendants, therefore, respectfully pray that the Order of this Court made on the 3rd day of June, 1908, restraining the execution aforesaid, be rescinded, and that they be permitted to enforce their said execution by a sale of so much of the property levied upon as may be sufficient to realize the amount of their said judgment, together with the interest and costs.

FRANCIS H. BAXTER,
Attorney for Nevers & Callaghan.

Journal Entries, July 27, 1909.

Altagracia Cases.

The filing of the following papers is now entered of record to wit:

Filed by F. H. Dexter, of counsel for Nevers & Callaghan, on the 26th instant in #561 and 565 consolidated, Motion of Nevers & Callaghan, to be made parties defendant in the suit of Ramon Valdes vs. Central Altagracia, Incorporated, Equity No. 564, San Juan, and to be permitted to file their answer to such Complaint or Cross-Bill as may be presented by the said Valdes.

There was also filed on July 25th, 1909, the answer and Cross-Bill of defendants Nevers & Callaghan to the complaint in 565, San Juan, "Central Altagracia, Inc., vs. Ramon Valdes and Nevers & Callaghan."

88 And on this Twenty-seventh day of July, 1909, F. H. Dexter calls up his motion on behalf of his clients Nevers & Callaghan for leave to be made party defendant in suit of Ramon Valdes vs. Central Altagracia, Incorporated, and to be permitted to file their answer therein, and Martin Travieso, counsel for Ramón Valdés being present, the said Dexter argues his motion and no one opposing same, the Court being fully advised grants it.

Whereupon the said Dexter files Answer and Cross-Bill of Nevers & Callaghan to Cross-Bill of Ramón Valdés in #564 and 565, San Juan, Consolidated.

Also files the said Dexter, a paper backed "Intervention and Protest of Succession Sanchez Larragoiti to Sale of Machinery belonging to it."

Now comes Benjamin J. Horton and enters his appearance as associate counsel for Nevers & Callaghan, defendants in the two Altagracia suits consolidated #564 and 565, San Juan.

#564 and 565, San Juan, Consolidated.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA
vs.
RAMÓN VALDÉS et al.

Now comes Ramon Valdes by his Solicitors of record Martin Travieso and José de Diego, and files Answer and Cross-bill herein.

#565, San Juan. Equity.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES et al.

89 Now comes N. B. K. Pettingill, of counsel for complainant, Central Altagracia, Incorporated, and files Affidavit herein.

#564 and 565, San Juan, Consolidated. In Equity.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS et al.

Comes now N. B. K. Pettingill, of counsel for the respondent in suit #564 and for Complainant in suit #565, and files an affidavit in the above consolidated causes setting forth the necessity for taking the deposition of one Geo. C. Lilley, E. C. Denning, and some seven others in the cities of Philadelphia and New York, and setting forth in substance what he expects to prove by said witnesses and asserting that complainant in suit #565 cannot safely go to trial without the evidence of such witnesses before the Court, and he therefore requests that the matter be postponed to give complainant in suit #565 an opportunity to take the depositions of said witnesses. And the Court hears him in that behalf, at length, and hears counsel for all the opposing parties, Messrs. Martin Travieso and José de Diego for the respondent, and F. H. Dexter and B. J. Horton for Nevers & Callaghan, and being fully advised, states to said counsel for complainant in suit #565, that the matter has been pending for more than a year and that Counsel had full notice of the Court's intention to press the matter to issue and trial, and that it is not disposed to delay matters at this time when the admissions of the pleadings are so broad that the proofs available here in Porto Rico are probably sufficient, and the amended complaint already on file in suit #565 and the answer thereto and the answer filed in suit #564, as well as the Cross-bill also recently filed in suit #565, make so many allegations and admissions, as that the real issue between the parties can be plainly seen and that in the opinion of the Court enough proof is available here in Porto Rico, and Complainant in suit #565, if it sees fit, may file exceptions to the answer and an answer to the Cross-bill, but that in the opinion of the Court, the same would be mere formalities, as the opposite pleadings of each of the parties in said causes reduces the issues almost entirely to questions of law, and hence the Court requires that the causes proceed and gives the said Complainant in suit #565 until to-morrow morning within which to file his exceptions to the Answer and his Answer to the Cross-bill in said suit, if he shall choose so to do, and informs him that he may consider the same as filed and file the same in writing at any time before the end of the trial, if he so desires, and that if it shall appear after Complainant makes its case or even at any time before the close of the case, that counsel's statement is well founded, that the absence of the

witnesses named does in fact prejudice his client, the Court will hear his application to have such depositions taken.

Journal Entry, July 28, 1909.

No. 564 and 565, San Juan, Cons.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC.,

and

CENTRAL ALTAGRACIA, INC.,

vs.

RAMON VALDES et al.

Now comes F. H. Dexter of counsel for Nevers & Callaghan, defendants in both of the above entitled suits, and with leave of the Court first had amends the answer and Cross-bill by them 91 filed to the Cross-bill of Ramón Valdés in these same two consolidated suits, by adding on the second page thereof and at the end of paragraph II, after the word "litigation," the following words, to wit: "That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico; by posting a like copy of the said execution, together with a copy of the Notice of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

Now comes Ramon Valdés, by his Solicitors of record and file the following papers, to wit:

Answer of Ramón Valdés to Cross-bill of Nevers & Callaghan;

Replication of Ramón Valdés to the answer of Messrs. Nevers and Callaghan, and

Replication of Ramón Valdés to the Answer of Central Altagracia, Incorporated.

The above consolidated causes come on for hearing before the Court without the intervention of an Examiner or Master and the Complainant, Central Altagracia, Incorporated, by its counsel N. B. K. Pettingill and F. L. Cornwell, although present in open Court, refusing to file any exceptions to the Answer or any Answer to the Cross-bill in suit #565 aforesaid, and protesting that they do not desire to proceed with the taking of testimony before said issues are made up and that they desire their full time which they allege they are entitled to under the rules within which to file the same,

92 and the Court having heard Counsel for all parties in that regard, and considering that the issues are sufficiently made up as the pleadings now stand, to enable the Court to do so,

announces that it will proceed, even though Counsel refuse to file such additional pleadings, and the court in that behalf makes a Statement which the Stenographer writes out and it is put in the files, wherein all counsel concerned can see it.

And thereupon the Court proceeds with the trial and the Complainant the Central Altagracia, Incorporated, by its said counsel refusing to proceed, the Court hears evidence for the respondents Nevers & Callaghan, and also evidence for the respondent Ramon Valdés, and the cause not being finished at the adjournment hour, the hearing is continued over until to-morrow morning at Ten o'clock, it being announced several times during the day by the Court that Complainant Central Altagracia has the right if it chooses to now cross-examine these witnesses or to at any time before the case is closed, *to* come in and make proof of the allegations of its bill in so far as the said allegations may not be admitted by the respondents while introducing their testimony, and may also make any proper proofs in the case they desire in or before the closing of the same, but that the Court will not further delay the taking of testimony as it feels that the issues are sufficiently before it, and the proofs necessary under the same are easily obtainable by all the parties here on the Island of Porto Rico.

(Filed July 27, 1909.)

Equity. No. 564 and No. 565.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.,

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES and NEVERS & CALLAGHAN.

Answer and Cross-bill.

93

Answer.

The Answer of Ramón Valdés, the Above-named Defendant, to the Bill of Complaint of Central Altagracia, Inc., Complainant.

The defendant Ramón Valdés, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:—

The defendant admits that in the month of March, 1907 the plaintiff herein negotiated a loan from the defendant for the sum of \$35,000, which the said plaintiff agreed to repay to the defendant on or before the first day of April, 1908, with interest at the rate of 10% per annum, but the defendant denies that the agreement by the Managing officers of the complainant corporation that defendant should be chosen a director and Vice-President of the Company at a salary of \$3,000 per year, was made as an additional consideration for the making of said loan from the defendant to the complainant, the fact being that such agreement was made after the negotiation of the said loan had been completed and in consideration for services rendered by defendant; and the defendant denies that he received any salary as director and Vice-President of the said Company.

The defendant admits that the Directors of the complaining corporation went to the City of New York for the purpose of negotiating an additional loan sufficient to repair and re-arrange the machinery of the Central and to pay off the debts of the said corporation; and that upon their arrival in New York the President and Treasurer of the complainant corporation submitted their plan to defendant who approved the same. The defendant states that he has no knowledge or information as to whether or not the said President and Treasurer of the said Company entered into negotiations with several parties. The defendant denies that by the terms of the preliminary agreement arrived at between the Officers of the complainant and the defendant herein, he, the defendant, was to advance to the complainant the funds necessary to purchase the needed machinery and that if the officers of complainant were able to return said advances with commissions and interest defendant was to accept the same, and in case of failure to return said advances, the same and all future advances were to be regarded as a refaccion debt and the proper documents drawn; and the defendant states the fact to be that by the terms of the said preliminary agreement it was provided that the defendant was to buy the necessary machinery for his own account, and was to turn it over to the Central Altagracia when the price of it was paid back to the defendant with interest, together with a commission for the purchasing and shipping of the said machinery.

The defendant denies that the agreement between the defendant and the holders of a majority of the stock on behalf of the complainant, whereby the defendant was to be elected a member of the Board of Directors and President of the corporation for a term of four years at a salary of \$3,000 per year with the right to appoint a Manager at \$2,500 per annum, and whereby he was to receive a block of 150 shares of stock of the complainant, was made in consideration of the promise made by the defendant to make the said loan and finance the Company; and the defendant states the fact to be that he was elected President of the said corporation after the execution of the deed of conditional sale of November 2, 1907, for the reason that the election of the defendant as such President was considered to be beneficial to the interests of the said

corporation in as much as the colonos and other peoples did not want to enter into contracts with the members of the old Board of Directors; and the defendant further states the fact to be that the said block of 150 shares of stock of the said company was received by him as compensation for services rendered and not as the consideration for his promise to finance the corporation.

The defendant denies having ever claimed the right to name a majority of the Board of Directors of the complaining corporation; and he also denies having urged upon the remaining directors the recognition of such rights; and the defendant further denies having proceeded arbitrarily or in any other manner to usurp the powers of the said Board of Directors.

The defendant denies that he, as President of the complaining corporation ever proceeded to control and manage the business of the said corporation without reference to the wishes, judgment or authority of its Board of Directors, and defendant states that he always acted in compliance with the resolutions adopted by the Board of Directors of the said corporation, and that there was a long period of time during which there were no meetings of the said Board on account of the absence of its members, other than the defendant.

The defendant denies having ever expended any money for any purpose whatsoever, without the knowledge or authority of the complainant's Board of Directors; and he further denies having in any manner changed the plans for the reconstruction of the factory of the complainant.

96. The defendant admits that he installed in the factory of the complainant a Chief Engineer in charge of the running of the machinery, but the defendant denies that the said Engineer was so installed by him against the protest of the other members of the Board, and the defendant further denies that the said Engineer was incompetent for such position. And the defendant states the fact to be that the said engineer installed by him in the said factory was and is a very competent, able and skillful engineer, who is at present in charge of the Central Carmen, a very important sugar factory, and that the defendant had and was compelled to install the said engineer in order to fill the place of the former engineer, one Mr. Voss, who had been killed in accident which occurred in the complainant's factory, and Mr. F. L. Cornwell, the only other member of the Board present at that time opposed the appointment of the said engineer, without giving any reasons for his opposition and simply because he wanted to appoint his own brother to fill such a responsible and difficult position, for which he was clearly incompetent.

The defendant denies that he ever managed the business of the complainant company according to his individual will and caprice, and he further denies having ever objected to the presence of any other of the official of the company in or about its factory, whether they were or not accompanied by defendant.

The defendant admits that he acted as the Treasurer of the Complainant corporation, after his election as President of the company,

and that he collected and disbursed the funds of the said Company, but the defendant denies that the surrender by the Treasurer of the performance of his duties as such Treasurer to the defendant by way of substitution was made in order to avoid responsibility for the usurping acts of defendants, and the defendant denies having com-

mitted any usurping acts, as alleged in the bill of complaint,
97 and he also denies having ignored the Treasurer in respect to his duties as such. And the defendant states that the moneys collected by him were disbursed and used by him in paying for the machinery sold by him to the Central, paying for the reconstruction works of the Central, which was authorized by the Board of Directors, advancing money to colonos and in other payments necessary for carrying out the work of the Central. And the defendant states that his substitution as Treasurer of the Company was made for the reason that the Treasurer of the company requested such substitution for the purpose of absenting himself from the Island, as he immediately did, and that such substitution was made to last until the Treasurer should reassume the duties of his office, but that the said Treasurer has never tried since that time to reassume such duties, for which reason defendant had to continue acting as Treasurer.

The defendant denies the allegation that he did not pay over to the complainant any amount beyond the loan of \$35,000, the fact being that he afterwards paid to complainant the sum of \$30,000 as part of the purchase price of the machinery sold by complainant to defendant; and he denies having spent any amount of money in complainant's business without the knowledge, consent or authority of its Board of Directors and without passing through the Treasury; and defendant further denies that the amounts expended were in excess of the expenditures authorized or contemplated by the Board of Directors, or that they were far more than warranted by the financial condition of the company; and defendant further denies having expended any money without benefit or advantage to the complainant.

The defendant admits that after the making of the preliminary agreement between the Officers of complainant and defendant, he, the defendant, assumed the active and entire management 98 and control of the complainant's business; but the defendant states the further fact that he was compelled to so assume control of said business for the reason that the said Central had been abandoned by Messrs. Cornwell and Pettingill, Vice-President and Treasurer of the Company, respectively, who absented themselves and went to the United States leaving in charge of the office at Mayaguez the bookkeeper, Mr. Euripides Lugo, but without instructions and without funds to enable him to do anything beneficial to the interest of complainant and its creditors. That the defendant then assumed control of the abandoned Central for the purpose of keeping the same as a going concern thus protecting the interest of the Company and of its creditors, and that he assumed such management and control with the consent and authority of the Vice-President of the Company Mr. F. L. Cornwell.

The defendant denies that his agents, or any of them, spread throughout the Community of Mayaguez the report alleged in the bill of complaint to have been spread by the agents of the defendant, to the effect that the defendant had been obliged to take over the Central on account of the inexperience, extravagance and incompetence of the President and Treasurer formerly in control of the affairs of the said company, that said officers had been removed and had no further connection with the company, and that defendant had purchased the factory and machinery. And defendant states the fact to be that after he became President and assumed the management of the Central, when his agents tried to make contracts with the colonos, the said colonos refused to make any contract, alleging that they did not wish to enter into any agreement to which Mr. Cornwell was a party, and then defendant's agents informed the said colonos, such being the fact, that Mr. Cornwell was no longer the President of the Central and that defendant was the new President and Manager of the said Central and that that was the only manager in which defendant's agents were able to secure contracts with the colonos, who absolutely refused to negotiate or have any dealings with the former officers of the Central Altagracia.

99 The defendant denies that he has caused any injury to the complainant's business or that he has destroyed its credit as an entity; and defendant further denies that the said corporation had built up or enjoyed any credit, as an entity, in the community and with the colonos. And defendant states the fact to be that after he became President of the said Corporation and assumed its management, the said Corporation began to have credit in the community and with the colonos, who, up to that time, had refused to deal with the said Central on account of their distrust of the officers formerly in charge of the management of its affairs.

The defendant admits that he contracted for and purchased the machinery in his own name and had the same shipped to him individually and as consignee, and states that he did so in pursuance of the agreement between the defendant and the officers of complainant. And the defendant further states that he contracted for, purchased and shipped the said machinery not only because such was the agreement, but also because the manufacturers of the said machinery did not wish to negotiate with any one else connected with the complainant Company except the defendant; and that defendant bought the machinery in his own name so as to help the Central to get the needed machinery in time for the grinding Season. That after the said machinery was installed in the Central it was turned over by defendant to the complainant, who received the price thereof out of the amount of \$30,000 paid by him to the complainant.

100 The defendant does not recollect and has no knowledge or information as to whether any contracts were made by his agents for the grinding of canes in defendant's own name; but defendant denies having, in any instance, entered in the books of the Central the cane so bought in his name, if any was bought,

as purchased at a higher price than that named in the contract with defendant; and he further denies having in any manner violated his duties to the complainant as its President and Managing officer, and he also denies that he ever caused any financial injury to complainant. And defendant states as a fact that the reason why such contracts were made in defendant's individual name, if any were so made, was that the colonos refused to deal with the complainant and preferred to contract with defendant personally; and that all such contracts, if any, were turned over and assigned by defendant to the complainant under the same terms and conditions of the contracts.

The defendant denies that he was guilty of inexpensable or any extravagance in the work preparatory to the grinding Season, and he further denies having expended large sums in excess of what was reasonably necessary; and defendant further denies that his management and direction of complainant's factory has been either extravagant or incompetent. And defendant states the fact that his administration was the most competent and beneficial to the central, the year of his management being the only one in the life of the said Central, in which, notwithstanding the many troubles, difficulty of sucrose and the small amount of cane ground, all expenses were covered and a profit was obtained.

The defendant denies that he discharged the employees in charge of the sugar machinery department of the Central, and he also denies having left the said sugar making department in charge of persons inexperienced and without skill, and that he continued as Chief Engineer an incompetent man; and the defendant states that the fact was that the man in charge of the sugar making department at the said Central, one Mr. Worth required a salary so large that it

101 could not be paid by the said Central, for which reason he voluntarily left the Central; and that defendant then employed a very competent man, at a much lower salary and who gave much better results than the said Mr. Worth. And the defendant further says that the man continued by him as the Chief Engineer, was a man known to him and who was demonstrated by his work to be entirely able and competent as a mechanical engineer and chemist.

The defendant denies that he has in any way mismanaged the service of cane by the railroad cars, and he further denies that during his management of the Central the colonos were unable to cut and haul cane with regularity. And the defendant also denies that during such time the service of cane was irregular, and that there were increased expenses in grinding and decreased results in sugar by reason of any acts on the part of the defendant herein.

The defendant admits that he absented himself from the Island, and states that the purpose of his said trip to the United States, was to try to settle the claim of Messrs. Nevers & Callaghan against the Central Altagracia, Inc., the complainant herein; but the defendant denies that his absence lasted nearly two months and he further denies that the Manager in charge during his absence was left without authority or discretion and without funds.

The defendant denies that the small profit made by the Central during his management was due to any extravagance or incompetence in the management of the Central by the defendant.

The defendant admits that the amount of sugar produced during his management was less than the amount produced during the previous years of the existence of the Central; but the defendant states the fact that although the amount of sugar produced under his management was less than in the former years, all the expenses were covered and a profit made, whereas, during former years, although more sugar was produced, the results were large losses to the Central and no profits whatever. And the defendant further states 102 the fact that the decrease in the production of sugar was due to the fact that the former managers of the Central had made contracts for small amounts of cane, with the exception of the contracts with the hacienda "Tulsa" and Javierre & Gil, and that the last named contract was lost in a litigation carried on by the former directors of the complainant; and that when defendant took over the management of the Central it was too late in the season to make contracts with colonos. And the defendant further states that another cause for the small production of sugar was the inability to get more cane on account of the great competition created by the Centrals newly established in the District of Mayaguez.

The defendant denies that he allowed any of the existing cane contracts to lapse and that he made no effort to extend those which have expired; and defendant states that he has made all the efforts necessary to renew the contracts with the complainant, but has been unable to obtain renewals on account of the bad treatment received by the colonos from the former Managers of the Central, which has made the said colonos distrustful and unwilling to contract with the complainant.

The defendant admits that several thousands of dollars were expended in the purchase of scales and that the said scales were erected at various places along the railroad; but defendant denies that the said expenditure resulted without benefit to the Central; and he further denies that he refused to pay for cane the competitive rates paid by other Centrals. And the defendant as a further answer says that the erection of such scales became necessary in order to compete with other Centrals which had established such scales along the railroad and that the erection of such scales was required by the colonos; and the defendant further states that such scales were erected with the approval and aid of the Vice-President of the Company Mr. F. L. Cornwell.

103 The defendant admits that on one occasion a lot of cane was purchased upon which there was loss; but defendant states that the price paid for such cane was the same as offered for the same cane by the Guanica Central. The defendant denies that he has purchased in his own name any of the indebtedness of the complainant, since occupying the office of President of the Company; and defendant states the fact to be that the said indebtedness was so purchased by him before his election as President, and that he did purchase the said indebtedness at the request of the then

President and the Treasurer of the Company and with their knowledge, for the purpose of avoiding litigation against the complainant and in order to keep the Central as a going concern.

The defendant admits that while he was in control and possession of the books and accounts of the complainant he made an offer of sixty cents on the dollar of the par value of complainant's capital stock for a controlling interest therein; but defendant states that his said offer was made without having carefully examined each one of the entries in the said books and accounts, and relying entirely upon the statements and representations made to the defendant by the holders of the said stock (who were also officers of the Company) which statements and representations proved to be false and fraudulent; and that after making a careful examination of the said books and accounts the defendant formed the opinion that the said stock was and is worth practically nothing.

The defendant denies the allegation that he did nothing to avoid the execution and levy upon the properties of the complainant corporation for the collection of the judgment recovered by Nevers & Callaghan in their suit against the said company, the fact being that defendant made a trip to the United States for the purpose of avoiding the said litigation and that later he applied to this Court

for the appointment of a Receiver among other things for 104 the purpose of avoiding a sale of the properties under the execution and levy of the said Nevers & Callaghan. The defendant states that he could not pay to himself the interest due to him under the contract of the conditional sale between him and the complainant, for the reason that there were no funds out of which to pay the said interest; and that there were not funds with which to pay the advances to the colonos and the salaries of the officers of the Company.

The defendant denies that the transactions between the defendant and the complainant, represented by its Directors, constituted a loan from the defendant to the said Corporation, the fact being, as it conclusively appears from the terms of the deeds executed between the said parties, that the transaction was in fact an absolute sale of the properties to the defendant by the complainant and then a conditional sale from the defendant to the complainant; and the defendant further denies that the said document was executed in favor of defendant solely and only for the purpose of aiding defendant in his endeavor to obtain refection security for his loan, the true fact being that it was the clear and express intention and design of the parties to the said contract that the title to the said properties pass from complainant to defendant.

The defendant denies that he made any loan to the complainant and he further denies having demanded and obtained from the complainant an usurious rate of interest; and the defendant further denies that the salary and stock compensation to be received by the defendant were used as a disguise for the payment of usurious interest; and the defendant denies that any of the contracts under which he claims possession and ownership of the properties of the Central is usurious.

As a further answer to the said bill of — complainant is not entitled to any of the different kinds of relief prayed for in its 105 said bill.

Wherefore the defendant respectfully prays that the said bill be dismissed with defendant's costs.

JOSE DE DIEGO,
MARTIN TRAVIESO, Jr.,
Solicitors for Defendant.

R. VALDÉS,
Defendant.

Cross-bill.

The Cross-bill of Ramón Valdés, One of the Defendants, to the Bill of Complaint of Central Altagracia, Inc.

To the Honorable Bernard S. Rodey, Judge of the United States District Court for Porto Rico:

Ramón Valdés, a subject of the King of Spain, residing in Porto Rico, one of the defendants in the above consolidated actions, brings this his cross-bill herein against the plaintiff Central Altagracia and against the other defendants Nevers & Callaghan, and respectfully represents to this Honorable Court as follows:

I.

That heretofore, to-wit, on or about the 11th day of April 1907, a public instrument executed in the City of San Juan, Porto Rico, before the Notary Public, Francisco de la Torre y Garrido, a contract was made between the defendant Ramón Valdés and the Central Altagracia represented by its Secretary and Treasurer, Mr. N. B. K. Pettingill, who was duly authorized for the execution of the said instrument by a resolution passed by the Board of Directors of the said Corporation, being in need of a certain amount of money, agreed to make and did make a conditional sale of the machinery and apparatus described in the said instrument to the defendant

Ramón Valdés. That the said conditional sale was made for 106 the amount of Thirty-five thousand (\$35,000) dollars, of which sum the representative of the Central Altagracia, Inc. acknowledged to have received to his entire satisfaction the sum of \$25,400 prior to the execution of the deed, leaving the balance subject to the order of the vendor corporation. By the terms of the said deed the said sale was to be consummated in favor of the purchaser Ramón Valdés upon the expiration of the first day of April, 1908.

II.

That before the expiration of the 1st day of April, 1908, which was the date fixed for the consummation of the conditional sale, to-wit, on the 28th day of October 1907 and by a public instrument executed before Augustine P. Barranco, a Notary Public in and for the County of Kings, State of New York, the Central Altagracia

Incorporated, represented by its President F. L. Cornwell (who was duly authorized by a resolution of the stockholders of the said corporation passed at the stockholders' meeting held on the 24th of October, 1907) entered into a contract with the defendant Ramón Valdés, whereby the said Corporation sold, assigned and transferred to the said Ramón Valdés, who accepted such sale assignment and transfer, a contract of lease and all other rights which the Company acquired from Salvador and Gerardo Castelló, and which were the same lease and rights acquired by the said Castelló from Don Joaquin Sanchez de Larragoiti, and the said Company further sold, assigned and transferred to the defendant herein, each and every right appertaining to the Company in and to the machinery, utensils and appurtenances existing in the properties of the Central Altagracia at the time that the said lease was assigned to the Company, as well as such rights as the Company has in and to the machinery, utensils and appurtenances installed by it thereafter on the said properties. The consideration for such sale was the sum of \$35,000, American gold, which the Company acknowledged to have already received from defendant Valdés as follows: \$35,000 which the Company had received by virtue of the instrument dated April 11th, 1907, already described; and the balance of \$30,000 which the Company received afterwards in cash from the defendant Valdés. By the said instrument of October 28, 1907, the instrument of April 11, 1907, was declared cancelled by the new contract. The contract of lease and other properties sold assigned and transferred by the Altagracia Central Inc. to the defendant Valdés, as well as the contract of April, 11, 1907, are fully described in the said instrument of October 28, 1907, a copy of which is hereto annexed and marked "Exhibit A."

III.

That after becoming the absolute owner of the contract of lease and other properties sold assigned and transferred to him by the Central Altagracia, Inc. by the deed dated October 28, 1907, to-wit: on the 2nd day of November 1907, and by an instrument executed before the Notary Public Joseph A. Carras, the defendant and the said Central Altagracia, Inc. represented by its President F. L. Cornwell (who was fully authorized for such purpose by the resolution passed by the stockholders of the said Corporation at a meeting held on the 30th day of October 1907) entered into a contract of conditional sale at the City of New York, U. S. A. by virtue of which contract the defendant Ramón Valdés conditionally sold, assigned and transferred to the Central Altagracia, Inc. the contract of lease and other rights which he acquired from the Central Altagracia Inc. by the deed of October 28, 1907, and also all the rights of the said defendant in and to the machinery, tools and appurtenances existing in the said properties of the Central Altagracia, and which the said Company sold to defendant Valdés by the same deed of October 28, 1907.

IV.

108 That in and by the terms of the aforesaid contract of November 2, 1907, it was expressly provided that the title in and to the aforesaid lease and machinery should not pass and be conveyed and transferred to the Central Altagracia, Incorporated, but should belong to and remain in Ramón Valdés, the defendant herein, until the said Central Altagracia, Inc., had fully complied with and performed certain conditions upon it imposed by the said contract. That among the said conditions was the payment of the full amount of the purchase price of the said lease and the said machinery, and which amount was the sum of sixty-five thousand dollars, payable in four equal installments, due, respectively, on the first day of April of each of the years 1908, 1909, 1910 and 1911, together with interest at the rate of 10% per annum, on all deferred payments and which interest was payable every six months, and to be compound- at such times if not paid.

V.

That it was further provided by the terms of the aforesaid contract that should the Central be unable to pay any of the aforesaid installments when due, the said Ramón Valdés, defendant herein, would be obliged to extend the time for the payment of the said instalment for the further term of one year; provided, however, that the interest due on account of the total sum then owing by the Central Altagracia, Inc., as aforesaid, should be or was paid.

VI.

That it was further provided by the terms of the aforesaid contract that should the Central Altagracia fail to keep and observe any of the conditions by it to be kept and observed, according to the terms of the said contract, and especially should the said corporation make default in the payment of interest when due, or 109 any of said instalments when due, then the said Ramón Valdés, the defendant herein, would immediately and ipso facto be entitled to re-enter into and take possession of the said factory and the said premises and the said machinery, and the said contract or lease, as the true, lawful and exclusive owner of the same.

VII.

That by virtue of the said contract of November, 1907, the said Central Altagracia went into possession of the said premises and factory and took possession of the said machinery and said contract of lease, and still continues to occupy and hold the same.

VIII.

That according to the terms of the said contract there became due on the first day of April, 1908, the first of the instalments above mentioned, amounting to \$16,250.00; and that on the first day of April, 1909, there became due the second of the said instalments

amounting also to the sum of \$16,250.00, together also with the interest aforesaid on the total sum of \$65,000.00 from the date of the aforesaid contract; but that the said Central Altamaria, Inc., has failed to pay all, or any part, of the said instalments, or of said interest.

IX.

That by the terms of the said contract the defendant herein is entitled to the immediate possession of the said premises, factory, machinery and lease, but that the said Central Altamaria, Inc., continues in possession of the same without the permission and without the will of the defendant herein, and refuse to deliver to him possession of the said premises, factory, machinery and lease after default in the payment of the interest and the first two instalments as aforesaid; and that the defendant herein on the date of the said contract of conditional sale was, and now is, the sole and exclusive owner of the said lease and the machinery mentioned in the 110 said contract and is now entitled to the possession of the premises, factory, machinery and lease aforesaid; and that heretofore, to wit, on the second day of June, 1908, the defendant herein demanded of the said Central Altamaria, Inc., the possession of the said factory, premises, machinery and lease, but the said corporation refused to deliver the same to the defendant, in violation of the express terms of the contract.

X.

That the said Central Altamaria, by its bill of complaint herein claims that the said contracts of October 28, 1907, and November 2, 1907, should be decreed to constitute a loan of money and not a sale of property; and that the said Central Altamaria is now seeking to avoid the legal effect of the aforesaid contracts by claiming that such contracts, which by their express terms are an absolute sale and a conditional sale of property, respectively, are loans of money and not what they purport to be by their express terms. And the defendant further alleges that to hold that such contracts are mere loans of money, would deprive the said defendant of the property which he legally acquired under and by virtue of the express and unqualified terms of the said contracts, and would convert the said defendant into a general creditor of an insolvent corporation.

XI.

That on the 16th day of May, 1908, judgment was rendered by this Honorable Court against the said Central Altamaria, Inc., and in favor of the firm of Nevers and Callaghan for a large sum of money then due and owing by the said Corporation to the said firm. That thereafter the execution was issued on the aforesaid judgment and a levy was made by the Marshal of this Court, in pursuance of said Writ, on the aforesaid factory and machinery on or about the 27th day of May, 1908, and that the said Marshal now threatens to sell the said factory and machinery in satisfaction of the said

judgment. And the defendant further states that the said levy so made by the Marshal of this Court, as aforesaid, was illegally made for the reason that the said properties did not on the date of the said levy belong to nor were the property of the Central Altagracia, Inc., the debtor of the judgment in favor of Nevers & Callaghan, but were and now are the property of the defendant herein, according to the express terms and conditions of the contract of conditional sale of November 2, 1907.

Wherefore the defendant respectfully prays that the said contract of October 28 and November 2, 1907, be held and decreed to be valid and subsisting obligations and binding upon the corporation Central Altagracia, Inc., in as much as the said contracts were expressly authorized by resolutions duly passed by the stockholders of the said corporation.

The defendant further prays judgment:

1st. For the sum of Ten thousand dollars (\$10,000) damages for the detention of the said premises;

2nd. That the Receiver of this Honorable Court and the said Central Altagracia, Inc., be ordered to turn over to the defendant herein the possession of the said lease, premises, factory and machinery;

3rd. That the attachment of the said properties made by the Marshal of this Court in the execution of the judgment in favor of Nevers & Callaghan be vacated and the said properties be declared free from the lien thereof; and that the said defendant- Nevers & Callaghan may be enjoined from enforcing the execution upon their judgment against the said property of the defendant Ramón Valdés;

4th. For the cost of the suit.

And that the defendant may have such other and further relief in the premises as equity may require and to your honor may seem meet.

112 And may it please your Honor to grant unto this defendant a writ of subpeena directed to the said complainant Central Altagracia, Inc., and to the defendants Nevers & Callaghan and to the members of said firm George C. Nevers, George B. Ackerson and James G. Callaghan, as copartners, commanding them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable court, then and there to answer to this defendant's cross-bill (but not under oath, the benefit thereof being hereby expressly waived) and to stand to, perform and abide by such further orders, directions and decrees as to your honor shall seem meet in the premises.

And your petitioner defendant shall every pray.

JOSÉ DE DIEGO,

MARTIN TRAVIESO, JR.,

Solicitors for Defendant Ramón Valdés.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Ramón Valdés y Cobán, being first duly sworn, says that he is the defendant mentioned in the foregoing answer and cross bill; that he has read the said answer and also the said cross-bill and knows the contents thereof, and that the contents and statements of both are true of his own knowledge, except as to the matters alleged on information and belief, and that as to those matters he believes them to be true.

R. VALDÉS.

Sworn and subscribed to before me by Ramón Valdés y Cobán, of full age, married and to me personally known, this 17 day of July, A. D. 1909.

JOHN L. GAY, *Clerk,*
By RICARDO NADAL, *Dept.*

113

(Filed July 27th, 1909.)

In Equity. No. 565.

THE CENTRAL "ALTAGRACIA," INCORPORATED, Complainants,
vs.
RAMON VALDES and NEVERS & CALLAGHAN, Defendants.

In Equity. No. 564.

RAMON VALDEZ, Complainant,
vs.
THE CENTRAL "ALTAGRACIA," INCORPORATED, Defendant.

Answer and Cross-bill of Nevers & Callaghan to the Bill of Complaint and Cross-bill of the said Ramon Valdez, Filed in the Above-entitled Causes.

These defendants, Nevers & Callaghan, being a copartnership composed of George W. Nevers and James G. Callaghan, citizens of the United States and residents of the city of New York, now and at all times hereafter, saving to themselves all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the Bill of Complaint and Cross-bill of the said Ramón Valdez herein filed,—for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

I.

On the sixteenth day of May, 1908, these defendants obtained in this Court a judgment in their favor and against the Central Altagracia, Incorporated, for the sum of fifteen thousand eight hun-

dred seventy-eight and 87/100 (\$15,878.87) dollars, together with interest at the rate of six (6%) — per annum from the 114 thirtieth day of July, 1907, and their costs, said judgment being rendered in the action instituted by these defendants against the said Central Altagracia, Incorporated, in the District Court of the United States for Porto Rico, sitting at San Juan, being law case No. 516.

II.

The said judgment represents the balance of a total indebtedness of twenty-five thousand (\$25,000) dollars for that amount of actual cash delivered by these defendants to the Central Altagracia, Incorporated, on the — day of October, 1906, for the purpose of buying machinery for the Central Sugar factory of the said Central Altagracia, Incorporated; and these defendants, upon information and belief aver that all of the said sum of twenty-five thousand (\$25,000) dollars was so invested by the Central Altagracia, Incorporated, and the necessary machinery for the operation of the said Central Sugar factory was therein installed prior to the first day of January, 1907; and, upon information and belief, these defendants aver that said machinery has been in constant use in the said factory, and now forms a part of its plant, and is a part of the same machinery which one Ramon Valdez is now claiming in this litigation.

That on the 27th day of May, 1908, execution was issued upon the said judgment out of this Court, and that on the 29th day of May, 1908, the same was levied by the Marshal of this Court upon "all the machinery within the factory building of the said Central Altagracia, Incorporated, near Mayaguez, Porto Rico, by posting a like copy of the said execution, together with a copy of the notice of the said levy, at the entrance of the said factory building, leaving the said machinery in the custody of J. Sifre, Manager."

III.

The said Valdez, in the Bill of Complaint as well as in his Answer and Cross-Bill filed in the above consolidated suits, sets up that 115 on the second day of November, 1907, he entered into a contract of conditional sale in the City of New York, by virtue of which the said Valdez conditionally sold, assigned, and transferred to the Central Altagracia, Incorporated:

(1) All his right, title, and interest in and to the lease of the Central Altagracia factory and twenty-two "cuerdas" of land upon which the same was situated, in the jurisdiction of Mayaguez, Porto Rico, which lease was executed on January eighteenth, 1905, between Joaquin Sanchez Larragoiti in favor of one Salvador Castelló;

(2) All of the right, title, and interest of the said Valdez in and to all of the machinery contained in the said Central factory on said date; to wit: November second, 1907.

A copy of the said contract of the so-called conditional sale, correctly translated into the English language is attached to this Answer and Cross-Bill, marked "Exhibit "A," and is made a part hereof to all intents and purposes as if the same were copied herein.

IV.

The said Valdez claims to have acquired the lease and machinery in the last paragraph described, by virtue of a certain document executed in the City of New York on the twenty-eighth day of October, 1907, in and by which the Central Altagracia, Incorporated, purported and pretended to sell and transfer to the said Valdez the said contract of lease and the machinery in the last paragraph described; but these defendants aver that the purpose and object of the said pretended sale was only to secure to the said Valdez the payment of the sum of Sixty-Five Thousand Dollars due to him by the said Altagracia, Incorporated, as in the last mentioned document set forth, and these defendants aver that at the time of the execution of the said last mentioned document, the machinery and assets of all kinds of the Central Altagracia, Incorporated, were reasonably worth three hundred thousand (\$300,000) dollars.

And these defendants further aver that it was the understanding and agreement between the said Valdez and the said Central 116 Altagracia, Incorporated, that such pretended sale to him of the said machinery and lease was to be in the nature of security only, and for that purpose the so-called conditional sale of November second, 1907, was immediately made by the said Valdez back to the Central Altagracia, Incorporated, it being understood by the said parties, that under the laws of Porto Rico, the Central Altagracia, Incorporated, could not execute a mortgage upon such machinery and lease, they having the character of personal property (bienes muebles) as said parties believed.

V.

These defendants aver that the said pretended sale by the Central Altagracia, Incorporated, to Valdez of the said machinery was null and void as against the creditors of the Central Altagracia, Incorporated, and particularly as against these defendants and the Succession of the said Sanchez Larragoity, for the reasons:

(1) As regards the attempted transfer of the lease, the Central Altagracia, Incorporated, had no power to transfer the same to the said Valdez or to any other person or Company.

(2) The Central Altagracia, Incorporated, had no power under the law of Porto Rico to transfer by such a document as that executed on the twenty-eighth day of October, 1907, or in any other manner, the machinery therein described, because the same constituted permanent fixtures attached to the soil, which could only be transferred with the latter by the owner thereof.

These defendants state that neither the pretended sale from the Central Altagracia, Incorporated, to Valdez, nor the alleged conditional sale from Valdez to the Central Altagracia, Incorporated, has ever been registered in the Registry of Property, and the defendants further allege that the said documents were secretly made and 117 purposely kept from public knowledge by both the officers of the Central Altagracia, Incorporated, and the said Ramon Valdez, until long after defendants herein obtained their said

judgment and after the levy of the said execution as hereinafter set forth. These defendants aver that the action of the said Central Altagracia, Incorporated, and of the said Ramon Valdez, in so executing the said documents and in keeping the same secret, constituted a fraud upon all of the creditors of the Central Altagracia, Incorporated, and particularly upon these defendants. (A copy of the said document executed by the Central Altagracia, Incorporated, to Ramon Valdez, duly translated into the English language, is attached hereto and made a part hereof, being designated "Exhibit 'B.'")

VI.

The said lease executed on January eighth, 1905 between the said Joaquin Sanchez Larragoiti and the said Salvador Castello, was a contract of a personal nature involving the reposal of special confidence and trust by the said Joaquin Sanchez Larragoiti in the said Salvador Castello; and, according to the terms thereof, no person or corporation could acquire said lease or work the said Central Altagracia property who was not brought in by the said Salvador Castello whom the said Salvador Castello directly and personally did not interest in the working thereof. The said lease further prohibited in express terms that the said Salvador Castello should under any circumstances, alienate, mortgage, or affect the said Central or the twenty-two "cuerdas" on which the same was situated, with any lien or encumbrance whatsoever. (A copy of the said lease, duly translated into the English language is hereto attached and designated "Exhibit C.")

VII.

Although this Court has, in a certain action instituted by the heirs of Juan Sanchez Larragoiti against the Central Altagracia, Incorporated, and Salvador Castello, rendered a judgment to the effect that Castelló had the right under the terms of the lease to transfer it to the Central Altagracia, Incorporated, these defendants aver that if such be the law, certainly under the terms of the said lease the said Castelló exhausted such powers in that regard as the court has determined him to have, and the Central Altagracia, Incorporated, had no power to alienate or encumber in any manner whatsoever, without the consent of the Sucesión de Sanchez Larragoiti or of the said Salvador Castelló, the said Central and the machinery therein and the twenty-two cuerdas of ground upon which the same is situated.

VIII.

These defendants aver that it is the design and purpose of the said Valdez to appropriate to his own use, all of the property above referred to, amounting perhaps in value to nearly half a million dollars, for the payment of an alleged debt of Sixty Five Thousand Dollars, notwithstanding that in truth and in fact, Valdez is but a general creditor whose claim these defendants, upon information and belief, aver to be largely padded with fictitious claims and usurious interest.

Forasmuch, therefore, as these defendants believe that it would be inequitable and oppressive to permit the said Valdez to assert his claim to the machinery and lease herein above described, and that it would be inequitable to these defendants to deprive them of the benefits of their said judgment and levy of execution, they respectfully pray:

(a) That the court decree that the said Valdez is not entitled to the said lease or any part of the machinery hereinabove described because of the documents hereinabove referred to or because of any indebtedness due and owing by the Central Altagracia, Incorporated, to the said Valdez, but that such indebtedness shall be decreed by the court to be of a general character to be realized only by a judgment or decree for such amount as may be due and just and the sale of such property as may belong to the Central Altagracia, Incorporated, subject, however, to the priority of right of these defendants and of such other persons as may have priority.

(b) That these defendants may be permitted to enforce, without delay, their said execution for the full amount of the judgment, with interest and costs.

(c) That the said pretended sale from the Central Altagracia, Incorporated, to the said Valdez, and the so-called conditional sale from Valdez to the Central Altagracia, Incorporated, herein described, be held to be null and void.

(d) That the court decree that the Central Altagracia, Incorporated, had no power to transfer to the said Valdez or to any other person, the said contract of lease executed between Sanchez Laragoiti and Salvador Castelló.

(e) That the receivership herein be immediately terminated and that the orders and injunctions heretofore made by this Court restraining these defendants from enforcing their said execution, be rescinded, and that the Clerk be instructed to issue forthwith an alias execution, and that the marshal of this court proceed to enforce the same upon such new machinery as has been placed in the Central Altagracia subsequent to its taking possession of the said property.

(f) That the Court perpetually enjoin the prosecution of the action at law instituted by the said Valdez against the Central Altagracia, Incorporated, being No. 563, San Juan Division.

(g) That the Court will grant such other and further relief in the premises as in equity may be right and proper, and that these defendants be entitled to all costs incurred by them in the present litigation.

(Filed July 28, 1909.)

Equity. 565.

CENTRAL ALTAGRACIA, INCORPORATED,

vs.

RAMÓN VALDÉS & NEVERS & CALLAGHAN,

and

Equity. 564.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

The Replication of Ramón Valdés to the Answer of Nevers & Callaghan.

The replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants Nevers & Callaghan, for replication thereunto, says that he does and will ever maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied to by this replicant, without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct — humbly as in by his said bill he has already prayed.

MARTIN TRAVIESO,
Solicitor for Plaintiff Ramón Valdés.

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(Filed July 28th, 1909.)

Equity. No. 565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN,

and

Equity. No. 564.

RAMÓN VALDÉS
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

*The Answer of Ramón Valdés, Complainant, to the Cross-bill of
Never & Callaghan, Defendants.*

The complainant Ramón Valdés, now and at all times hereafter, saving to himself all and all manner of benefit of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the Cross-Bill of the Defendants Nevers & Callaghan herein filed, for answer thereto or to so much thereof as the said complainant is advised it is material or necessary for him to make answer to, answering says:

First. The complainant admits the allegations contained in paragraphs I, II, and III of the said cross-bill.

Second. The complainant denies that the purpose and object of the contract of sale of October 28, 1907, was only to secure to the complainant the payment of the sum of \$65,000 due to him by the Central Altagracia, Inc.; and complainant states the fact that the deed of October 28 was an absolute sale of the properties therein described by the said Central to this complainant. And the complainant further denies that at the time of such sale the machineries of the said Central were worth the sum of (\$300,000) three hundred thousand dollars. And the complainant denies the allegation of paragraph IV of the said cross bill that there was an agreement or understanding and agreement between complainant and the Central Altagracia that the contract of sale aforesaid was to be in the nature of a security only; and the complainant denies that the deed of conditional sale was executed to carry out such alleged purpose.

Third. The complainant denies each and all of the allegations contained in paragraph V of the said cross-bill; and the complainant specifically denies that the action of complainant and the said Central constitutes a fraud upon any of the creditors of the said Central, the fact being that such sale was made bona fides and for a good, real and valuable consideration.

Fourth. The complainant denies the allegations contained in paragraphs VI and VII of the said cross-bill.

Fifth. The complainant denies that the properties involved in the said contracts amount in value to nearly half a million dollars as alleged in paragraph VIII of the cross-bill; and he further denies the allegation that he is a mere general creditor of the Central and that his claim is fictitious and padded with usurious interest. And complainant states that he is the sole and true owner of the properties sold to him by virtue of the aforesaid contract of October 28, 1907. And the complainant denies every other material allegation in the said cross-bill contained, which is not expressly admitted or denied.

Therefore, the complainant respectfully prays that the said cross-bill be dismissed, with this complainant's costs most wrongfully sustained.

MARTIN TRAVIESO, JR.,
Solicitors for R. Valdés.

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(Filed July 28th, 1909.)

In Equity. No. 565.

CENTRAL ALTAGRACIA, INC., Complainant,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN, Defendants,

and

In Equity. No. 564.

RAMÓN VALDÉS, Complainant,

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN, Defendants,

Replication.

The Replication of Ramón Valdés, Plaintiff, to the Answer of Central Altagracia, Inc.

The replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, says that he does and will ever maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is

true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, — humbly as in and by his said bill he has already prayed.

MARTIN TRAVIESO, JR.,
Solicitors for Plaintiff.

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(Filed September 25, 1909.)

Nos. 564 and 565. Equity.

RAMÓN VALDES
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDÉS and NEVERS & CALLAGHAN.

*Statement of Findings of Fact and Law and Opinion of the Court
on the Merits.*

The above two suits which were consolidated for the purposes of a receivership, and for the purposes of trial, are bills in equity under which a receiver was appointed and concern the property known as the "Altagracia Sugar Central" near Mayaguez, on this Island. The property previous to January 1905, consisted of a relatively small sugar mill of a somewhat ancient pattern and twenty two cuerdas of ground, upon which it was situated with perhaps some other personal property. At that time it belonged to a man by the name of Joaquin Sanchez de Larragoiti who was then a resident of the city of Paris, France. On the 18th of January, 1905, this Mr. Sanchez de Larragoiti entered into a private contract or lease of said premises with one Salvador Castelló, running for a period of ten years thereafter. Under this contract, Castelló was to have the right to continue said sugar central for the manufacture of sugar and to put in any new machinery he saw fit, and was to pay his lessor 25% of the profits accruing therefrom, and also had the right as to the remaining 75% of the profits to interest anyone he saw fit with himself therein, as he might 125 deem convenient.

About the 6th of June following the date of this contract, the parties extended its term for a period of ten additional years, so as to make it a twenty year term in all. A few days later, on July 1st, 1905, this lessee Castello, entered into a contract with one Frederick L. Cornwell, and transferred all his right in this lease to him as trustee, for the benefit of a corporation to be immediately organized, and to be known as the Central Altagracia Incorporated. Castello was to have certain stock and a certain official position in

this new concern as a consideration for the transfer. Mr. Cornwell, aided by Mr. N. B. K. Pettingill, then became chief promoter of the concern and immediately organized under the laws of the State of Maine a corporation as intended, and transferred all of the rights that had thus been transferred to Cornwell in trust, to the new corporation which immediately proceeded to business, and within three years next following installed upon said twenty two acres of ground a large amount of new sugar machinery and other improvements said to have cost with freight and installing charges added, quite or over two hundred thousand dollars. This corporation proceeded with its business as a sugar grinding central with more or less success, and with more or less trouble with its stock-holders, colonos and creditors. See *Wilson v. Central Altagracia*, 2 P. R. Fed. 429, and *Central Altagracia, v. Javierre & Gil*, 3, *id.* 256, and same *v. Nevers & Callaghan* 3, *id.* 496; also equity suit docket No. 579, San Juan Division, Larragoiti heirs *v. Castelló* and *Central Altagracia*, and equity suit No. 203 Mayaguez Division, *Castelló et al. vs. Central Altagracia*.

On April 11, 1907 owing to the failure of Ceballos & Company and for other reasons, the concern became somewhat involved financially, and was forced to borrow from the complainant Ramon Valdes, in

suit 564 of the caption, thirty five thousand dollars for which 126 it gave him some sort of an instrument in the nature of a "Venta con Pacto de Retro"; but later in October of that same year, was forced to borrow from him an additional sum of thirty thousand dollars, making the whole debt sixty five thousand dollars. It seems that this money was needed to finish putting in the machinery as planned. At the time of giving this additional money to the central which occurred in the city of New York, the two transactions were merged and some very peculiar instruments were entered into between the parties in the office of Curtis, Mallet-Prevost & Colt, who it seems acted as attorneys for all the parties. First what purports to be an absolute sale of the entire rights that the central Altagracia had in and to the sugar mill and plant was executed to Valdes, and he in turn immediately made a sale back to the corporation of the same property. Then the corporation elected Valdes its President and Manager, etc. He had been vice-president and a Director previous to that time since first lending it money and he immediately took charge of the plant for the ensuing grinding season with a view to paying himself back in installments as was stipulated in the contracts between the parties, but the property was according to the instruments mentioned to belong to him absolutely until he was thus repaid, etc.

It was fully in evidence on the trial that from the time Valdes first advanced any money to the central, he took considerable interest in its affairs. During his connection with the concern he personally purchased, often at heavy discounts it is true, large amounts of pressing debts and claims against it, which it is contended because of his then fiduciary relation to the concern he cannot now collect the face value of, but for which he can now only collect the amount he actually paid therefor with interest. It is also in

evidence that he loaned Mr. Cornwell \$7,500 with some of the capital stock of the central as security, and that he afterwards was forced to take the stock either on account of or in satisfaction of the 127 debt. It is further in evidence that he received an additional 150 shares of the capital stock of the central. He contends that this was given him in consideration of his work in and in the nature of a commission for purchasing the machinery for the plant, in addition to a salary of \$3,000 per annum which he was to have, although he collected only \$500 for two months' wages. Counsel for the central contends that not only were his position as Director and Vice President, and later his position as President as well as the salary and the 150 shares of the capital stock given him as a consideration for making this advance or loan to the central, but that such were the terms which Mr. Valdes demanded and increased them from time to time, and that therefore, no matter what the instruments executed between the parties were or can be called, or the parties were forced to call them, owing to the peculiar situation and exigencies of the case, and the absence of a chattel mortgage law in Porto Rico, still the transaction is and was essentially a loan from Valdes to the central, for which not only the then officers but the stock-holders by a meeting held were willing he should have. The central therefore contends, that Mr. Valdes has been the recipient of usurious contracts and interest and that in this sort of a suit the central should have all such legal advantage of such fact as the law gives it.

It developed also that Mr. Valdes while thus managing the property personally and necessarily, expended some \$14,000, or more, over and above the \$65,000 mentioned, in merged advances which he made to the concern. The central contends that, at any rate as to all the debts which he purchased, and as to all advances which he thus or otherwise made over and above the \$65,000, he is purely and simply a general creditor therefor, and as to those debts and claims that he purchased for less than face value the central is entitled to the benefit of such reduced purchase price.

128 During the trial Mr. Valdes introduced evidence tending to show that outside of his stock purchases he has advanced nearly \$94,000, to the central including the \$65,000 represented by the contracts made in New York. An examination of this account shows it to be to a considerable extent made up of interest and other items that he may or may not be entitled to recover, as we shall hereafter find.

Valdes apparently did his best in and about the management of the plant and in and about purchasing and installing machinery, but the season being then so far advanced as that for one cause or another, little if any success attended the enterprise, and in consequence the payments to him and to all other creditors were defaulted. During this management of Valdes, of the sugar mill considerable friction arose between the promoters and former managers and chief owners Messrs. Pettingill & Cornwell, on the one side, and Mr. Valdes on the other, and so bitter did this become as that on June 2nd, 1908 Valdes, claiming to be the owner of all of the rights

of this corporation in and to this sugar mill and plant filed a suit at law No. 563, on the docket, to eject the corporation entirely therefrom, and to install himself as the absolute owner of all the corporation's rights therein even against the corporation's creditors. The basis for this suit of his was the absolute sale of the property so alleged to have been made to him in New York, in October 1907, which instrument was then presumably for the first time brought to the knowledge of others than the actual parties thereto and their attorneys.

Valdes immediately followed this suit at law with a petition in equity for a receiver, which was filed as suit No. 564, as mentioned in the caption.

Immediately thereafter, and on the said same day of June, 1908, Messrs. Pettingill & Cornwell as representing the central Altagracia Incorporated, came in, and filed suit No. 565, as mentioned in the caption, also petitioning for the appointment of a receiver 129 for the plant and property and alleging many things with reference to the action and management of Valdes concerning the property while in his charge etc. A few days later, and after several hearings were had, the Court consolidated the two equity suits Nos. 564 and 565, and appointed a temporary receiver of the property. A few months later however, and after much additional litigation had transvened in the matter, and after debts had been created, this temporary receiver was discharged as such, and appointed permanent receiver, with power to borrow money and proceed with the management of the property as a going concern in an effort to enable it to pay its debts and give the Court an opportunity to assert the rights of the respective parties. All this procedure was largely at the request of and in accordance with the wishes of all of the parties to these particular suits. This receivership has continued ever since (nevertheless the receiver's salary was reduced to a care-taker's salary many months ago) but unfortunately owing to short crops in that vicinity and to many other annoying, unfortunate and unavoidable causes, resulted in a loss of about \$17,000, some of which is represented by outstanding receiver's certificates and all of which debt is a first lien upon all the rights of the Central Altagracia Incorporated, in and to the sugar plant and premises about which we are speaking.

The record of the two causes mentioned in the caption has grown quite large, and during the continuance of this receivership the Court called all of the counsel in said consolidated suits as well as counsel in several other suits concerning the property, together and made strenuous efforts to bring this unfortunate litigation to some sort of a satisfactory conclusion. These meetings were held both at San Juan and Mayaguez. At one time the Court made an effort and expressed its willingness to permit the issuance of receiver certificates therefor if the interest of the Sanchez de Larragoiti heirs (the original lessor having died) could be purchased for the central

130 at a reasonable price, so that there might be a title in fee in the Central Altagracia Inc. and that the Court might thus avoid the continuous applications and efforts of the represent-

atives of that estate to oust everybody connected with this litigation from the premises.

Unfortunately all this effort of the court in which most of the counsel joined, proved futile and nothing could be done.

In the files of the consolidated causes mentioned in the caption will be found extensive written memoranda made by the Court from time to time, setting out with more or less detail all these different efforts it made with a view to ending this litigation. Finally, in the latter part of July 1909, the Court went to the Mayaguez district and there, after several conferences with counsel in all the suits connected with this litigation, passed upon pending demurrers, etc., with a view to raising the proper issue so that the rights of the parties might be settled.

For a time this action of the court appeared to meet the approval of all counsel concerned, and the bills or petitions in both suits were amended and cross-bills filed so that he could easily see the real issue between all the parties connected with the suits mentioned in the caption. See the two statements made and signed by the Court and placed in the files setting out these facts under date of July 21 and 28, 1909. However, after this action on the part of the Court, the Central Altagracia by one of its solicitors, N. B. K. Pettingill, under date of July 27th, filed his own affidavit claiming he could not safely go to trial because of the necessity for taking depositions of several witnesses whose names were set out in the affidavit, and who lived in New York and elsewhere in the States, and attempting also to set out what he expected to prove by such witnesses and stating that he withdrew any offer or intimation he may have theretofore made that he would immediately proceed with the trial. However, all other counsel connected with the matter being present, and the day having arrived when the trial on the

merits was to proceed, and the Court after having examined

131 the answers and the cross-bills, concluded that there was no necessity for further delay and that the parties during the more than a year that the matter had been in the hands of the court and the property in charge of its receiver, had had ample time within which to perfect their pleadings and that if it in fact thereafter became necessary as shown by the proofs, that the evidence of any of the witnesses whose names were set out in the affidavit should in fact be required, the court would hold the proceedings for such purpose. Thereupon the Court without the intervention of an examiner or master proceeded for several days both there and later at San Juan, and received evidence on the merits from complainants Valdés and the intervenors Nevers & Callaghan, in which hearing both Messrs. Pettingill and Cornwell testified at great length with reference to the rights of the Central Altagracia Incorporated, although they took no part as counsel for the central in the proceedings on the trial, save incidentally as such witnesses. On this hearing also all proper exhibits and proofs were received and the stenographer's notes when afterwards written out, and made a record of upwards of 200 pages of typewritten matter. Immediately at the end of the hearings, counsel for Valdés and for the intervenors

Nevers & Callaghan and also for the owner of the fee of the property the Larragoiti estate, addressed the Court orally at great length, and afterwards filed elaborate written arguments and briefs. Counsel for the Central Altagracia Inc. took no part in the oral arguments and filed no brief but insisted that he was entitled to except to the answers of Nevers & Callaghan and Ramon Valdes, in suit 565, at some future time which he did under date of September 7th, 1909, but which exceptions because of the Court believing they were introduced for mere purposes of delay and because they were manifestly frivolous in character, were overruled.

For several days last past we have read and examined the evidence thus taken and written out from the stenographer's notes, 132 and have examined the several large exhibits introduced, so that at the present time we have the contentions of the different parties fully before us, and well in mind.

It transpires that several months before any negotiations of any kind or character had taken place, between the Central Altagracia and Valdes, the former obtained a loan of some \$25,000 from the firm of Nevers & Callaghan of New York, promising to deliver the sugar crop of the mill for the ensuing season to repay the same, but failed to do so, and left a large part of said debt due and owing. This firm according to all we can gather from the record, had no knowledge of the transactions between the central and Valdes, or these so-called sales of the entire property of the concern to him when the same are purported to have been made or at any time previous to the application for the appointment of the receiver, as none of such instruments were recorded in any registry of property.

We might pause here to say that the Registry of Property of the District where this land and plant are situated contains no entry concerning the property in question, save that which brings the title into Joaquin Sanchez de Larragoiti, the lessor of Castello. All the other transactions as heretofore mentioned, it seems were not and could not be registered under the law.

After Nevers & Callaghan's account became due, and on December 12, 1907, they filed a suit (516, Law Docket) in this court, on the note that represented it, and thereafter on May 16th, 1908, recovered judgment for nearly \$16,000. Under this judgment, on the 29th of May 1908, they caused execution to be levied on "all the machinery within the factory building of the said Central Altagracia, Incorporated."

On June 3rd, while the contest for the receivership was going on, we made an order suspending this execution of Nevers & Callaghan, thus levied upon the machinery of the sugar mill, until the further order of the court, but providing in the order 133 that such suspension should in no manner affect the lien rights if any existed by virtue of such execution in favor of Nevers & Callaghan. This action of Nevers & Callaghan in thus levying their execution is no doubt what precipitated at that particular time this controversy, or at least caused both the other contestants to each apply for a receiver, although the same result would at all events have soon followed.

We have made the foregoing considerable statement of facts connected with this litigation without, as can be seen, showing what the real controversy is.

As we see it, the effort of the Central Altagracia through their attorneys by their action in refusing to take part in the trial on the merits, is to secure delay in the proceedings. We cannot imagine any other object, because from the developments at the trial, it is manifest that every fact that can be known about the matter is well in evidence and that nothing remains that necessitates the taking of the depositions of any of the witnesses in New York or elsewhere, mentioned in the affidavit of July 28th, of Judge Pettingill, solicitor for the Altagracia, which he filed as stated at the time he endeavored to avoid proceeding with the trial on the merits.

The effort on the part of Mr. Valdes all through the litigation has been to show—and he has made strenuous efforts in this behalf—that he is the absolute owner of all the new machinery put in this plant and in addition the owner of all the lease and machinery rights of the Central Altagracia in the sugar plant and land in question, and that he is entitled as against that corporation and all its stockholders and creditors to immediately take possession thereof. Nevers & Callaghan simply claim that in and by their said suit and the levy of their said execution, they have obtained as against the machinery an absolute lien superior at least to Mr. Valdes's or any other creditor, and perhaps even superior to the

rights and interests of the estate of the original lessor, Larra-
134 goiti. Counsel for Nevers & Callaghan, claim that Valdes

is nothing but a general creditor, because as they allege, the Central Altagracia could not sell him any right in the plant or land in question, and because the alleged transfers were not recorded so as to give notice to existing or future creditors, or anybody else and because a chattel mortgage is unknown to the laws of Porto Rico.

The record contains much evidence tending to show that the main object of the officers of the Central Altagracia and Valdes, was that the latter should have security for his advance of money. Neither Mr. Pettingill or Mr. Cornwell denied that, but on the contrary during the giving of their evidence several times affirmed it.

As stated, we have examined with great care the contentions of counsel for Valdes and Nevers & Callaghan, and while their laborious efforts are commended for industry, their arguments in many instances tend to carry us away from the real issue. And therefore we think we can settle this unfortunate matter by confining ourselves to the triangular controversy that is before us, without affecting the alleged or real rights or interest of others not parties to these consolidated suits.

We are unhesitatingly of the opinion that the entire matter between the Central Altagracia and Mr. Valdes, no matter what they may call it in the instruments executed between them, was and is as contended by the Central, a loan of money for which security was intended to be given. As between the parties of course, the instruments they made would ordinarily be binding, but in a suit in

equity like this, where its designation as an outright sale is attacked, the court will look behind the face of the instruments to ascertain what the transaction really is. See our opinion in Am. Colonial Bank v. Cabrera et als., 3 P. R. Fed. 14, and cases cited.

It is therefore our opinion that the transaction as between 135 those two parties is an equitable mortgage or lien, and that because of the breach of the conditions of it, Valdes is entitled to have it foreclosed. We think though, that this equitable mortgage or lien, should be thus secured and guaranteed to him only for the \$65,000 and interest mentioned and that as to every other advance that he made to the concern, or paid for it, he is but a general creditor. This latter statement, of course, does not apply to his stock purchases, because as to those he stands in the same position as any other stockholder and his expenditures on that account are probably a complete loss.

We also hold that as to all of the accounts, promissory notes, claims and debts which he assumed or paid for the concern, he is entitled to come in only as a general creditor therefor, and only for the actual amounts, plus interest which he paid therefor, as set out in the notes purchased, or at 6% per annum on claims or debts where the interest is not mentioned, and that he is not entitled to claim the face value thereof against the Central, because at the time he made such purchases or so guaranteed such debts, he was both a stock-holder and an officer of the corporation itself, and it is fundamental in law that no person occupying any such fiduciary relation to a corporation, can at such time, purchase claims or debts against it at a discount, without giving the concern whose officer he was, the benefit of such discount. See our opinion in the Canovanas case, 2 P. R. Fed. 195, and cases cited, where we went fully into the law on this question.

The next proposition, that is, as to what the relative situation as between this equitable lien or mortgage of Valdes on the one hand, and the execution of Nevers & Callaghan on the other, is not so easy,—but on the whole, under the rule that the law favors the diligent, and that the levying of an execution fixes a plaintiff's rights

136 in the absence of superior rights in others, we feel bound to hold, and do hold, that Nevers & Callaghan's lien is superior to that of Valdes. It is our opinion, that any creditor of this corporation who secured a judgment and a levy upon any of the property rights of the Central Altagracia, previous to June 2nd, 1908, when Valdes applied for a receiver to take charge of it, unquestionably both at law and in equity has a superior right to Mr. Valdes,—and this, because of the peculiar situation of the law in Porto Rico. A chattel mortgage is unknown to the jurisdiction and no record was made or could be made, and so far as we know, no creditor knew anything about Mr. Valdes' alleged rights previous to his application for a receiver, when he for the first time produced his alleged deed and sued to eject everybody from the property in question. See suit No. 563, law docket this district. The fact that he, months previous, took possession of the plant and managed it, does not change the situation, because he took possession as Presi-

dent of the Company, and therefore permitted the whole world to believe that it was still the property of the Central Altamaria Incorporated. From the moment that he filed his suit No. 563, aforesaid and his bill in suit 564 of the caption, his situation was in our opinion different, and from that moment his lien which we hold to exist, took effect as against non-diligent creditors who had neither obtained judgments or liens previous to that time.

We are not inclined to give ear to the oft repeated statement of counsel for Nevers & Callaghan, that Mr. Valdes' action all through this matter amounted to a fraud in law upon all the creditors of the main concern, because the Central itself through meetings of its stock-holders authorized the transaction with him, and the officers of the concern importuned and implored him to save them in their financial stress. Further, the evidence clearly shows that

137 Mr. Valdes very reluctantly advanced money to the concern at all, and did so largely as matter of friendship for some of the officers of the corporation. It is fully in evidence that he performed a large amount of services for which the \$500 in the way of salary received has but ill paid him, and of course, the large amount of money he spent for the purchase of stock, is, as stated, under the circumstances probably a complete loss. Further, his action in spending a large amount of money over and above his mortgage lien, in paying for the installing of the machinery, and in silencing outside threatening creditors by purchasing their claims and accounts is ample evidence, that instead of being an enemy with ulterior designs, he was at that time the financial friend of the concern. He would probably now willingly make a large sacrifice and discount on his claim if he could secure his money, and have done with it all, in fact he so stated several times while testifying. He is probably the largest general creditor outside of what we are here holding, that he has an equitable mortgage lien for. It is our opinion therefore that notwithstanding the unfortunate situation, he is entitled to the thanks rather than to the censure of at least the officers of the corporation.

We do not desire that anything said in this memorandum of our views should be construed as any reflection upon the officers of the Central Altamaria Incorporated. On the contrary, we think they have shown their good faith because if our information is right, they have invested their all in the enterprise, and have perhaps lost it. They did this without taking to themselves any security for their own protection, and therefore share the same financial fate as other stockholders. In addition to this they have probably lost their years of hard work in and about the effort to make the enterprise a

success. In truth it can be said that the failure of the concern cannot be ascribed to the individuals connected with it.

True, incompatibility of tempers between the officers and some stock-holders had its effect, but droughts and failure of crops, as well as the unfortunate failure of Ceballos & Co., and above all, the sudden erection of competitive enterprises more than anything else tended to this unfortunate result.

We therefore find and hold that the equitable mortgage and lien

which Mr. Valdez is entitled to upon all of the rights of the Alta-gracia, in and to the said lease, plant, land and property of the Central Altagracia should be foreclosed, and in default of the payment to him of the amount due as here found the property should be sold according to law at as short a day as may be in order to enforce such payment and that at such sale Mr. Valdes shall have the right to be a bidder on account of his said lien to the extent of the principal sum of \$65,000 plus interest as mentioned in the instruments between the parties, to the date of the sale.

We further find and hold, that out of the proceeds of such sale the claims shall be paid in full in the order following:

1. All outstanding receiver certificates, taxes, accounts and other debts of the receivership, which shall include the sum of \$500 as overdue wages to Benjamin S. Cornwell, which in the opinion of the Court is a preferred claim, and ought to have been paid at the insolvency of the receivership.
2. The claim in full of Nevers & Callaghan to the date of the sale.
3. The lien aforesaid of Mr. Valdes, and
4. All other creditors of the concern as shown in the receiver's report filed under date of July 27th, 1909,—such creditors including Mr. Valdes, to be paid pro rata in so far as may be.

Therefore, a decree will be immediately prepared by counsel for said Valdes, making the findings of fact and law herein indicated foreclosing Mr. Valdes' lien and in default of payment within a short day, providing for the sale as herein set forth, and further providing that at the time of the sale,—in case Mr. Valdes is the purchaser,—the amount of the receivership debts, and of the entire cost of the sale and court costs and the debt of Nevers & Callaghan, shall be paid into the Registry of the Court.

The cause is retained for all necessary purposes.

B. S. RODEY, *Judge.*

(Filed October 9, 1909.)

No. 564. Equity.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC.

Consolidated with

No. 565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES and NEVERS & CALLAGHAN.

Order.

And now on this 9th day of October 1909, Martin Travieso Esq., one of the counsel for Ramón Valdes in the above entitled consolidated causes, having inquired of the Court as to what name shall be inserted in the decree as the person to make the sale of the property herein, the Court announces from the bench that there are special reasons therefor and it is therefore ordered that:

Francisco Fano, be and he hereby is appointed Special Master in Chancery herein to make the sale under the decree about 140 to be entered herein.

B. S. RODEY, Judge.

Journal Entry, October 14, 1909.

564. Equity.

RAMON VALDES
vs.
CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565.

CENTRAL ALTAGRACIA, INC.,
vs.
RAMON VALDES and NEVERS & CALLAGHAN.

Final Decree of Foreclosure and Sale.

This cause came on to be heard at the April 1909 Term, in open Court, upon the bills of complaint in the two consolidated causes, the answers and cross-bills of the defendants in both cases, the replications and answers to the cross-bills of Ramón Valdés and Nevers &

Callaghan, and the proofs in said cases and the argument of counsel for Ramón Valdés and counsel for Nevers & Callaghan; and

It appearing to the Court that a bill of complaint was filed in this court on the second day of June, 1908, by Ramón Valdés against the Central Altagracia Incorporated, praying for the appointment of a Receiver of the property of the said corporation and for the delivery to him of the possession of the said properties in compliance with the express terms of certain contracts between the said Ramón Valdés and the defendant corporation, which contracts were introduced as evidence, and that on the same second day of June, 1908, the 141 defendant Central Altagracia, Inc., filed its demurrer to the said bill of complaint; and

It further appearing to the Court that on the said June 2, 1908, the Central Altagracia, Inc., filed in this Court its bill of complaint against Ramón Valdés, praying for the appointment of a Receiver of its properties and charging the defendant with negligence and mismanagement of the said property while being President and Director of the corporation, to which bill of complaint the defendant Valdés demurred; and

It further appearing to the Court that the said two cases were consolidated and a temporary Receiver appointed, who afterwards was appointed permanent Receiver with power to borrow money and manage the property of the Central Altagracia Incorporated; and

It further appearing to the Court that the firm of Nevers & Callaghan, defendants in the two consolidated causes, filed their petition of intervention in said causes claiming that they had a lien over the properties of the Central Altagracia, Inc., superior to the claim of Ramón Valdés, by virtue of an execution levied upon the said property on the 29th day of May, 1908, and that the said Nevers & Callaghan demurred to the bills of complaint in the two causes; and

It further appearing to the Court that on July 17th, 1909, at a session of the Court held at Mayaguez, the demurrers in both causes were overruled pro forma, without objection from any party, with a view to bringing the said causes to an issue; and

It further appearing to the Court that soon after the overruling of the demurrer in both causes, the Central Altagracia Incorporated, defendant in suit No. 564, filed its answer to the bill of complaint of Ramón Valdés, to which answer the said Valdés immediately replied,

and that Nevers & Callaghan, also defendants in said suit 142 No. 564 filed their answer and cross-bill to the bill of Ramón Valdés, whereupon the said Valdés filed his replication and answer to the said answer and cross-bill, and

It further appearing to the Court that soon after the overruling of the demurrer in suit No. 565, Ramón Valdés, one of the defendants therein, filed his answer and cross-bill to the bill of complaint of Central Altagracia, Incorporated, whereupon the other defendant Nevers & Callaghan filed their answer to the said cross-bill, of Ramón Valdés, and that the Central Altagracia, Inc., refused to file its replication to the Answer of Ramón Valdés, although it was given ample time and opportunity to file its said replication, and that the said Central Altagracia, Inc., although repeatedly requested to, refused

to take any part in the trial of the consolidated cases and to proceed with the said trial, insisting that the depositions of several absent witnesses were necessary for the presentation of its case and alleging that it had the right to file exceptions to the answer of Ramón Valdés; and

It further appearing to this Court that such efforts on the part of the Central Altagracia, Inc., in insisting on the taking of depositions, which the Court found to be utterly unnecessary, and in refusing to proceed with or take any part in the trial of the cases, were made solely for the purpose of delaying the proceedings in said causes, there being no necessity for further delay; and

It further appearing to the Court that the Central Altagracia, Inc., on the 7th of September, 1909, filed its exceptions to the answer of defendant Valdés, in suit 565, and that said exceptions were overruled upon the grounds that they were manifestly frivolous in character and were introduced for purposes of delay, and

It further appearing to the Court that the property of the Central Altagracia, Incorporated, is as follows:—

143 1. That certain lease of the sugar factory known as "Central Altagracia" situate, lying and being near the city of Mayaguez, Island of Porto Rico, together with certain machinery for the manufacture of sugar then at that time being in and forming part of said factory together also with twenty-two cuerdas (22) of land upon which the said factory is built and which pertain, and are annexed to and immediately surround the said factory, executed at Paris, France, on or about the 18th day of January, 1905, by Joaquin Sanchez de Larragoiti and in favor of Salvador Castelló of Mayaguez, Porto Rico, and for a term of twenty years from January 18th, 1905.

2. All the machinery, apparatus and utensils used for or in connection with the manufacture of sugar, installed in the Central Altagracia factory by the Central in the Central Altagracia Incorporated, after the assignment of the lease by Salvador Castelló to the said Corporation, forming the manufacturing plant of the said Company.

3. All the rights, claims, appurtenances, contracts for the grinding of cane, scales, railroad tracks and switches, tools, implements, household and office supplies, rights of way, easements, mules, horses, tug boats, barges and all others personal or real property belonging to the Central Altagracia, Incorporated, and,

It further appearing to the Court that the legal effect of the contracts of October 28th, and November 2, 1907, between the Central Altagracia, Inc., and Ramón Valdés, was to create an equitable mortgage or lien over the said property of the Central Altagracia, Inc., and in favor of the said Ramón Valdés, for the sum of Sixty-five thousand (\$65,000) dollars, together with the interest stipulated

in the said contracts, at the rate of 10% per annum, and that
144 as to the other amounts claimed by the said Ramón Valdés
he is but a general creditor of the Central Altagracia, Inc.,
and

It further appearing to the Court that Nevers & Callaghan acquired

a lien over the said property of the Central Altagracia Inc. by virtue of the execution levied upon the said property on the 29th of May, 1908, and that the said lien is superior to the equitable mortgage or lien of Ramón Valdés, for the reason that Nevers & Callaghan acquired by their judgment and levy of execution prior right in and to said property so levied upon, being the machinery in said factory.

The Court having heretofore appointed one H. H. Scoville as Receiver of the property of the Central Altagracia and one Elton Warner as an Accountant to revise the books and accounts of the Central Altagracia, Inc., and said Receiver and Accountant having heretofore filed their reports herein, and the same having been approved by the Court, showing the present indebtedness of the said corporation to be as follows:

Bills Payable.

Favor Frank S. de Ronde Co. due 7/1/07.....	\$5,000.00
" " " " due 21/1/08.....	7,000.00
" " " " due 4/1/08.....	7,000.00
" " " " due 5/1/08.....	4,488.82
Total	\$23,488.82

Due to Ramón Valdés:

As at July 12, 1907.....	\$35,000.00
Sundry Cash advances and supplies furnished down to July 1, 1908.....	43,031.00
Total	\$78,031.31

Less:

Sundry amounts advanced for cultivation of cane, Hacienda Carmelita.....	4,404.50
Net liability	\$73,626.81

Sundry Creditors:

Baneo de Puerto Rico.....	683.91
Carried forward	\$683.91
145 Amount brought forward.....	\$683.91
Treasurer of Porto Rico, Taxes, 1907-08.....	1,513.73
Deming Apparatus Manufacturing Co.....	1,854.58
Unpaid Wages, Voucher 717.....	10.19
Q. Saavedra, (cane).....	54.37
N. B. K. Pettingill (account salary).....	3,046.21
Am. R. R. Co. of Porto Rico, switches, etc.....	4,829.83
.50	.50
B. S. Cornwell.....	6,704.83
J. M. Ceballos & Co. (loan).....	

F. L. Cornwell.....	178.05
American Colonial Bank.....	3,000.00
E. E. Saldaña.....	34.90
West India Oil Co.....	569.99
Sucesores de Abarea.....	2,503.98
McMurtrie-Gailey Co.....	753.14
Link Belt Company.....	37.20
Robert S. Graham.....	1,006.75
Sugar Apparatus Mfg. Company.....	67.95
C. A. Schieren & Co.....	149.04
A. Lynn & Hijos de Perez Moris.....	16.75

\$27,015.90

Nevers & Callaghan:

Judgment in their favor.....	\$15,878.87
Plus interest at 6% July 30, 1907 to May 16th, 1908, date of judgment.....	756.90
	\$16,635.77
Interest to 8/16/09 at 6%.....	1,247.68
	\$17,833.45
Total	

146 Receivership:

Receiver's Certificates.

No.	Favor.	Issued.	Due.	Amount.	Interest.
1. N. B. K. Pettingill...	8/15/08	5/15/09	\$1,000.00	9%	
2. H. H. Scoville.....	8/15/08	5/15/09	1,000.00	9%	
3. J. M. Turner.....	8/15/08	5/15/09	3,000.00	9%	
4. Ramón Valdés.....	9/23/08	6/23/09	1,000.00	9%	
5. Ramón Valdés.....	10/22/08	7/22/09	1,000.00	9%	
8. Fritze, Lundt & Co. (Certificate given to guarantee sugar deliveries, became due 3/31/1909)			\$2,500.00		
Offset by open account.....			873.97		
				1,626.03	
				\$8,626.03	
Approximate accrued interest.....				760.00	
				\$9,386.03	

Taxes:

Treasury of Porto Rico, Insular taxes for Fiscal Year, July 1, 1908, to June 30, 1909.....	\$2,780.70
Municipal Taxes	150.00
Corporation Licence fee.....	25.00

\$2,955.70

Colonos:

Alfredo Christy	\$750.00
Pedro E. Ramirez.....	84.00
Domingo Torres	239.27
Rafael Pujals	545.94
Antonio Paz	10.00

	\$1,628.36

Sundry Creditors:

Ramón Valdés	\$3.41
Sucesores de Suau.....	309.98
J. Ochoa y Hermano.....	542.10
Sucesores de Abarca.....	618.92
V. Bareltta & Co.....	104.40
Vidal & Co.....	10.80
E. Gonzalez	5.39
West India Oil Company.....	137.90
Sobrinos de Portilla.....	176.90
Heyman & Co.....	58.87
Sucesores de Bianchi.....	7.16
Review Printing Co.....	6.00
Dooley, Smith & Co.....	4.78
A. Bravo & Co.....	124.60
H. V. Grosch	190.64
P. Bellido.....	24.15
W. Falbe	51.56

	\$2,377.56

147. And it further appearing to the Court that the Central Altagracia Incorporated has defaulted in the payment to Ramón Valdés of the two installments of the principal and the interest due, in accordance with the terms of the contracts between the said corporation and the said Ramón Valdés, which contracts have been held to constitute an equitable mortgage or lien in favor of the said Ramón Valdés over the properties of the said corporation above described and, that the said mortgage or lien should be foreclosed and the sale of the said property should be decreed to answer to the terms of the said contracts.

Therefore, it is by the Court ordered, adjudged and decreed that the mortgage lien of the said Ramón Valdés under and by virtue of the said contracts of November 2, 1907, be and it hereby is established and declared on each and all of the properties, leases, rights and contracts hereinbefore described, for the sum of sixty-five thousand dollars (\$65,000.00) with interest at 10% per annum from November 2, 1907.

And it is further ordered by the Court that the said lien be and it hereby is foreclosed and all rights of the said Central Altagracia, Incorporated, in and to all the said properties, rights, leases and con-

tracts composing the Central Altagracia, Incorporated, as a going concern be and the same are hereby ordered sold to satisfy the said lien in favor of Ramón Valdés for the sum of \$65,000 and interest as aforesaid, unless the Central Altagracia, Incorporated, pays to the said Ramón Valdés the said sum of \$65,000 and interest within 30 days from the entry of this decree.

And it is further ordered, that Francisco Fano be, and he hereby is appointed Master to make the said sale and to report his action to this Court for further action herein.

And it is further ordered by the Court that, as hereinbefore set out, the said property be sold in bulk as a going concern, and that 148 the successful bidder at the said sale do pay in, in cash, within five (5) days from the date of the acceptance of his said bid by the Master the sum of \$3,000 in cash to the Registry of this Court, the same to be returned to the said bidder should the report of the sale by the said Master not be approved.

And it is further ordered that Ramón Valdés shall have the right at such a sale to be a bidder on account of his said mortgage lien, to the extent of the said principal sum of \$65,000, plus interest at 10% from November 2, 1907, to the date of the sale.

And it is further ordered and decreed that after the payment of all court and actual costs out of the proceeds of the said sale the claims shall be paid in full in the order following:—

First. All outstanding receiver's certificates, taxes, accounts and other debts of the receivership, which shall include the sum of \$500.00 as overdue wages to Benjamin S. Cornwell.

Second. The claim of Nevers & Callaghan, amounting to \$15,878.87, plus interest at 6% from July 30, 1907, to the date of the sale.

Third. The full amount of the mortgage lien of Ramón Valdés, for \$65,000.00, plus interest at 10% from November 2, 1907, to the date of the sale.

Fourth. All other creditors of the concern as shown in the Receiver's Final Report, such creditors, including Ramón Valdés to be paid pro rata in so far as may be; provided, however, that the said Ramón Valdés shall collect only the amounts actually paid by him for the debts, notes and accounts of the corporation purchased by him at a discount while he was an Officer of the concern, after he has proved to the satisfaction of the Master hereinbefore appointed what amounts he so actually paid.

149 And it is further ordered that the successful bidder at the said sale may pay in as cash on his said bid the Receiver's certificates and obligations outstanding at the time of the sale, provided, however, that the said bidder shall not pay in less than the aforesaid sum of \$3,000.00 in cash to be applied to the payment of Master's fees, compensation of the receiver, stenographer, and other court costs and expenses.

And it is further ordered and decreed that the successful bidder at said sale shall pay in, in cash, at the time the sale is approved by the Court an amount sufficient to pay in full all Receiver's certificates and obligations existing and not represented by the said bidder.

And it is further ordered that in case Ramón Valdés should be the purchaser at the sale, he must, at the time of the said sale, pay the full amount of all the costs and receivership debts, the entire cost of the sale and the debt in full of Nevers & Callaghan into the Registry of this Court.

It is further ordered and decreed that the above described property shall be sold by the Master hereinbefore appointed in bulk and as a going concern, at public sale, at the door of the Court House of the United States District Court, for the District of Porto Rico, in the City of San Juan, Porto Rico, on the 27th day of November, A. D. 1909, at two o'clock in the afternoon.

It is further ordered and decreed that notices of such sale shall be published by the said Master once a week for at least four weeks prior to the date hereinbefore fixed for such sale, in the newspapers known as "El Tiempo" and "El Boletín Mercantil," both published in the City of San Juan and also in the newspaper called "La Voz de la Patria," published in the City of Mayaguez, Porto Rico.

150 And it is further ordered and decreed that upon the approval by the Court of the sale made in pursuance of this decree, the Master shall execute a deed in favor of the purchaser of the said property, and thereupon the said Central Altagracia, Incorporated, shall be forever shut out and debarred from any and all title and equity of redemption in and to the said property.

San Juan, P. R., October 14, A. D. 1909.

(Signed)

B. S. RODEY, *Judge*.

To which action of the Court in thus entering the foregoing decree and order of sale of the property and in declining to hold that he is now the owner of all of the said plant and property subject to the rights of the Larragoiti heirs as set forth in his several bills of complaint, herein, and in holding the Nevers & Callaghan claims superior to his rights, the said Ramón Valdés by one of his solicitors Martin Travieso, Jr., then and there duly objects and excepts.

And further, the Central Altagracia, Incorporated, by its solicitors in like manner duly objects and excepts to the action of the Court in entering said decree and order of sale as aforesaid.

Journal Entry, November 22, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Comes now Martin Travieso, Jr., counsel for Ramón Valdés complainant in No. 564 and respondent in No. 565, and presents a motion for an appeal from the findings and decree of the Court filed under date of September 25, 1909 in the above consolidated causes. The Court orders the same to be filed and directs counsel to notify counsel for the opposite parties regarding the filing of this motion.

Petition for Appeal and Assignment of Errors.

(Filed November 22, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Petition for Appeal and Supersedeas.

To the Honorable Bernard S. Rodey, Judge of the above Court:

Ramón Valdés, complainant and defendant respectively in the above consolidated causes, conceiving himself aggrieved by the decree made and entered by the above named Court in the above entitled cause under date of October 14th, 1909, providing for the sale of the property of Central Altagracia Incorporated and the mode of distribution of the proceeds of said sale, does hereby appeal from the said decree to the Honorable the Supreme Court of the United States,

for the reasons set forth in the assignment of errors filed herewith; and he prays that this his petition for the said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree and order were made, duly authenticated, may be sent to the Supreme Court of the United States. And the appellant further prays that an order be made fixing the amount of security which the said appellant shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioner will ever pray, etc.

MARTIN TRAVIESO, JR.,
Solicitor for Ramón Valdés.

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Equity. Nos. 564 and 565.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Assignment of Errors.

Comes now Ramón Valdés, complainant and respondent, respectively, in the above consolidated causes, and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the decree made by this honorable Court on the 14th day of October, 1909, in the above entitled cause:—

I.

That the District Court of the United States for the District of Porto Rico erred in not finding that Ramón Valdés was and is the absolute owner of the property of the Central Altagracia, Incorporated, by virtue of the contracts executed on the 28th of October and 2nd of November, 1907, respectively, by and between the Central Altagracia Incorporated and the said Ramón Valdés.

II.

That the said Court having found that the transactions between Ramón Valdés and the Central Altagracia Inc. did not amount to fraud in law upon the creditors of the said corporation, committed error in not holding that the said Ramón Valdés had a right and was entitled to the immediate possession of the property of the said Central by virtue and under the express terms of the said contracts of October 28 and November 2, 1907.

III.

That the said Court erred in finding that the transaction between the Central Altagracia Incorporated and Ramón Valdés, notwithstanding the express stipulation of the instruments executed between the parties, was a loan of money for which security was intended to be given, and that the legal effect of the aforesaid contracts of October 28th and November 2nd, 1907, between the Central Altagracia Incorporated and Ramón Valdés, was to create an equitable mortgage or lien over the property of the Central Altagracia Incorporated and in favor of the said Ramón Valdés for the sum of Sixty five thousand dollars (\$65,000), together with the interest stipulated in the said contracts, and that as to the other amounts claimed by the said Ramón Valdés, he is but a general creditor of the corporation.

IV.

That the said Court erred in finding that Nevers & Callaghan acquired a lien and prior rights over the property of the Central Altagracia Incorporated, by virtue of the execution levied upon the property on the 29th of May, 1908, and in holding the said lien to be superior to the equitable mortgage or lien found to exist over the said property and in favor of the said Ramón Valdés.

V.

That the said Court erred in holding that the said contracts of October 28 and November 2, 1907, could not bind or prejudice Nevers & Callaghan because they were not recorded; and it also erred in holding that the said Nevers & Callaghan were third parties within the meaning of the law providing for the registration of deeds of real property.

VI.

That the said Court erred in ordering the sale of the property of the Central Altagracia Incorporated, which is the same claimed by Ramón Valdés to be his absolute property by virtue of the aforesaid contracts.

VII.

That the said Court erred in finding and decreeing that out of the proceeds of the sale the sum of five hundred dollars (\$500.00) be paid to Benjamin C. Cornwell, as overdue wages, and that the same sum be included within the receivership debts as a preferred claim.

VIII.

That the said Court erred in decreeing that out of the proceeds of the said sale the claim of Nevers & Callaghan must be paid in full and before payment of the equitable mortgage or lien found to exist over the property of the Central Altagracia Incorporated and in favor of Ramón Valdés.

IX.

That the said Court erred in holding that the said Ramón Valdés shall collect, as general creditor of the corporation, only the amounts actually paid by him for the debts, notes and accounts of the corporation purchased by him at a discount while he was an officer of the corporation.

X.

That the said Court erred in holding that the said Ramón Valdés, in case he should become the purchaser at the sale must, in addition to the costs and receivership debts, pay in full into the Registry of the Court the claim of Nevers & Callaghan.

XI.

That the said Court erred in overruling the objection of counsel for Ramón Valdés, to the following question asked of witness Frederick L. Cornwell, who acted as representative and officer of the corporation in the execution of the contracts of October 28 and November 2, 1907, between the Central Altagracia Inc. and Ramón Valdés, and which question was objected to upon the ground that the said witness could be allowed to testify against his own act:—

“I will ask you to state to the Court just what the circumstances were, which led up to the execution of these documents?”

And that it was error to allow the said witness to testify against his own act and deed and for the purpose of changing the contents of the written instruments.

XII.

That the said Court erred in overruling the objection of counsel for Ramón Valdés to the following question asked of the aforesaid witness Frederick L. Cornwell, and in allowing the said witness to answer the same.

“What was the actual fact about the execution of that document; was it intended to be an absolute sale?”

Which question was objected to upon the ground that the witness, being a party to the instrument, could not testify against the contents of his own act and deed.

XIII.

That the said Court erred in denying the motion of counsel for Ramón Valdés made after Nevers & Callaghan rested their case to dismiss the cross-bill of the said Nevers & Callaghan, upon the ground that the evidence failed to show that there was fraud, either in fact or in law, to authorize the Court to sustain the said cross-bill, and upon the further ground that there was nothing in and about the facts shown to show that the said Nevers & Callaghan have any lien as against Ramón Valdés.

XIV.

That the said Court erred in overruling the objection of counsel for Ramón Valdés to the admission in evidence of a paper or memorandum (Marked Exhibit "F" for Nevers & Callaghan,) offered for the purpose of changing the contents of the written instruments between Ramón Valdés and Central Altamira Inc.

The objection to the admission of the said memorandum was made upon the grounds that the date of its execution had not been proven and further that there being a deed executed between Ramón Valdés on one side and Central Altamira, on the other, all previous memoranda or agreements were merged into the final written agreement and could not be admitted in evidence.

156 In order that the foregoing assignment of errors may be and appear of record, the appellant Ramón Valdés presents the same to this Court and prays that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

MARTIN TRAVIESO, JR.,
Solicitor for Appellant Ramón Valdés.

Journal Entry, November 26, 1909.

564. Equity.

RAMÓN VALDÉS
vs.

CENTRAL ALTAMIRA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565. Equity.

CENTRAL ALTAMIRA, INC.,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN.

The above-entitled consolidated causes which were recently tried together came on this day in open court for a hearing on the application of Ramón Valdés, one of the parties, by his counsel Martin Travieso, Jr., that his said client be granted an appeal to the Honorable the Supreme Court of the United States from the decision and decree herein, with supersedeas, and requests that the Court fix a bond in that behalf, and he then and there files, in addition to said application, an assignment of alleged errors in the premises. Francis H. Dexter appears for his clients Nevers & Callaghan and incidentally in the interest of the Larragoiti heirs who are the owners of the fee to the land upon which the plant is situated. And the Court having heard said respective counsel regarding said application and with reference to the amount at which the bond to stand as a supersedeas should be fixed, and being fully

advised, and in consideration of the fact that the Valdés lien amounts to about \$78,000, and the outstanding receivership debts to about \$18,000, and the Nevers & Callaghan claim to the like amount of about \$18,000,—all this exclusive of costs of all kinds in the cause, states that the appeal will be, and hereby is, granted, upon said applicant filing a good and sufficient bond conditioned as required by law and reading to such party or parties as may be proper, in the sum of one hundred and fifty thousand dollars (\$150,000), and which bond, if it is intended that the application now made shall supersede the sale which is ordered for tomorrow, must be filed and approved in the manner required by law on or before ten o'clock of tomorrow, November 27th instant; provided, that if said applicant desires the appeal without supersedeas, then and in such event he shall only be required to file a bond conditioned as aforesaid in the sum of three hundred dollars, and in the latter case the sale will take place as already ordered. To which action of the Court in thus refusing to grant supersedeas in the premises unless the bond in the large sum aforesaid is filed, the said applicant by his said counsel then and there objects and excepts.

Journal Entry, November 27, 1909.

564. Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

565. Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

RAMÓN VALDÉS and NEVERS & CALLAGHAN.

Comes now Martin Travieso, Jr., counsel for the complainant in cause No. 564 and respondent and cross-complainant in cause No. 565, and presents a cost-bond on appeal in the above-entitled 158 consolidated causes in the sum of Three hundred Dollars, the same being in accordance with the Court's order herein under date of November the 26th instant, and the said cost-bond is duly approved by the Court and ordered to be filed, and the appeal is therefore considered as perfected.

Appeal Bond for Costs.

(Filed November 27, 1909.)

Equity. Nos. 564 and 565.

RAMÓN VALDÉS
vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,
vs.
RAMÓN VALDÉS and NEVERS & CALLAGHAN.*Bond on Appeal to Supreme Court.*

Know all men by these presents, That we, Ramón Valdés, as principal and Eudosio Cuetara and M. Mendiá as sureties, are held and firmly bound unto Central Altagracia Incorporated and the firm of Nevers & Callaghan, of New York, in the full and just sum of Three Hundred (\$300.00/100) dollars to be paid to the said Central Altagracia Incorporated and Nevers & Callaghan or to his attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of November, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at the District Court for the 14th day of October 1909, in a suit pending in said District Court of the United States for Porto Rico, between the above named parties a decree was rendered against the said Ramon Valdés, and the said Ramón Valdés having obtained an appeal to reverse the decree so entered in the aforesaid suit, and a citation issued to Central Altagracia Incorporated and Nevers & Callaghan citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington on the — day of — next.

Now, the condition of the *condition of the* above obligation is such that if the said Ramón Valdés shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

(Signed)
" " "R. VALDES.
EUDOSIO CUETARA.
M. MENDIA.[SEAL.]
[SEAL.]
[SEAL.]

Sealed and delivered — the presence of

A. M. BACON.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, Eudosio Cuétara, resident of Porto Rico, do solemnly swear, that after paying my just debts and liabilities I am worth \$1000.00 in real estate within the jurisdiction of this Court, and subject to execution, levy and sale.

(Signed)

EUSEBIO CUÉTARA.

Sworn to and subscribed before me this 27th day of November, 1909.

[Seal of the U. S. Dist. Court for Porto Rico.]

(Signed)

JOHN L. GAY,

Clerk United States D. C. for P. R.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, M. Mendiá, resident of Porto Rico, do solemnly swear that after paying my just debts and liabilities I am worth \$1000.00 in real estate within the jurisdiction of this Court, subject to execution, levy and sale.

(Signed)

M. MENDIA.

Sworn and subscribed before me this 27 day of November, 1909.

[Seal of the U. S. Dist. Court for Porto Rico.]

(Signed)

JOHN L. GAY,

Clerk U. S. District Court for Porto Rico.

Approved this 27 day of November, 1909, at 1. P. M.

(Signed) B. S. RODEY, Judge.

(Filed December 13, 1909.)

564 and 565 Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

CENTRAL ALTAGRACIA, INC.,

vs.

R. VALDÉS and NEVERS & CALLAGHAN.

To the Clerk of the above Court:—

You will please prepare a transcript of the record in the above consolidated causes, to be filed in the office of the Clerk of the Supreme

Court of the United States, under the appeal heretofore allowed to said Court, and include in said transcript of record the following pleadings, proceedings and papers on file, to wit:

Original Bill of complaint, No. 564 June 2, 1908.
 Demurrer of Central Altagracia, " 564 June 2, 1908.
 Journal entry page 424, " 564 June 2, 1908.
 Bill of Complaint, " 565 June 2, 1908.
 Journal entry page 424, " 565.
 Journal entry page 451, " July 20, 1908.
 Court's views " July 20, 1908.
 Order appointing permanent receiver, July 22, 1908.
 Appearance and demurrer of Nevers & Callaghan, 565 July 23, 1908.
 Journal entry (Mayaguez) double caption, July 21st, 1909.
 Journal entry (Mayaguez) " " July 24, 1909.
 Journal entry (Mayaguez) " " July 27, 1909.
 Journal entry (Mayaguez) " " July 28, 1909.
 Amended demurrer of Nevers & Callaghan, July 17, 1909.
 Court's memorandum, July 21, 1909.
 161 Amended bill of complaint, July 22, 1909.
 Answer of Central Altagracia and Exhibits "A" and "B," July 24, 1909.
 Motion of Nevers & Callaghan to be made parties defendant, July 26, 1909.
 Answer and cross bill of Nevers & C. (565) July 26, 1909.
 Answer and cross-bill of R. Valdés, July 27, 1909.
 Answer and cross-bill of Nevers & Callaghan to cross-bill of R. Valdés, July 27, 1909.
 Replication of R. Valdés to Answer of Nevers & Callaghan, July 28, 1909.
 Answer of Ramón Valdés to cross-bill of Nevers & Callaghan, July 28, 1909.
 Replication of Ramón Valdés to the answer of Central Altagracia, July 28, 1909.
 Findings of facts and law and opinion on the merits, filed September 25, 1909.
 Order appointing Francisco Fano, Special Master in Chancery, October 9, 1909.
 Final decree of foreclosure and sale, October 14, 1909.
 All entries relating to this appeal made in Journal after the final decree was made and entered.
 Petition for appeal filed on behalf of Ramón Valdés, November 22, 1909.
 Assignment of Errors filed on behalf of Ramón Valdés, November 22, 1909.
 Order allowing appeal, made November 26, 1909.
 Copy of Praecept.
 Said transcript to be prepared in chronological order and as required by law and by the rules of this Court and of the Supreme Court of the United States, for filing in the office of the Clerk of the Honorable Supreme Court of the United States.

Very respectfully,

MARTIN TRAVIESO,
Solicitor for Ramón Valdés.

162 In the District Court of the United States for Porto Rico.

No. 564. In Equity.

RAMÓN VALDÉS

vs.

CENTRAL ALTAGRACIA, INC., and NEVERS & CALLAGHAN.

Consolidated with

No. 565. In Equity.

CENTRAL ALTAGRACIA, INC.,

vs.

R. VALDÉS and NEVERS & CALLAGHAN.

I, John L. Gay, Clerk of the District Court of the United States in and for the District of Porto Rico, do hereby certify the foregoing one hundred and sixty-one pages, numbered from 1 to 161 inclusive, to be a true and correct copy of the record and proceedings in the above and therein entitled causes as the same remains of record and on file in the office of the Clerk of said Court and as called for by the Praeipe.

In testimony Whereof I have hereunto set my hand and affixed the seal of said Court this eighth day of January, 1910.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,

Clerk of the District Court of the United States for Porto Rico.

Endorsed on cover: File No. 21,984. Porto Rico D. C. U. S. Term No. 193. Ramon Valdes, appellant, vs. Central Altagracia, Incorporated, and Nevers & Callaghan. Filed January 28th, 1910. File No. 21,984.